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Johnson v. Guzman Chavez
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I. INTRODUCTION

The Immigration and Nationality Act (INA) authorizes the detention of individuals placed in removal proceedings due to their unauthorized presence in the United States.[1] While 8 U.S.C. § 1226 specifies the rules of detention of aliens "pending a decision on whether the alien is to be removed from the United States," a different statutory provision, 8 U.S.C. § 1231, governs the cases of aliens who have already been "ordered removed."[2] These two sections provide different rules for two distinct groups of noncitizens: individuals in the first group may be able to be released from detention on bond by requesting a bond hearing under 8 U.S.C. § 1226; however, 8 U.S.C. § 1231 creates a second group for noncitizens who have been ordered removed and are subject to a ninety-day mandatory detention ("removal period") without the right to request a bond hearing.[3] This Note focuses on the question of whether 8 U.S.C. § 1226 or 8 U.S.C. § 1231 applies to detention of noncitizens with reinstated removal orders who are seeking withholding-only relief. The Supreme Court addressed this issue in *Johnson v. Guzman Chavez,* holding that detention of aliens whose orders of removal have been reinstated is governed by 8 U.S.C. § 1231, and not 8 U.S.C. § 1226; therefore, such aliens are not entitled to bond hearings while seeking withholding of removal.[4]

Prior to *Johnson v. Guzman Chavez,* the federal circuit courts were divided regarding this question, and different interpretations of the statutory text led to different outcomes in cases depending on the federal circuit by

1. 8 U.S.C. §§ 1226, 1231 (2012).
2. *Id.* §§ 1226(a), 1231(a)(1)(A), 1231(a)(2).
3. *Id.* §§ 1226(a), 1231(a)(1)(A), 1231(a)(2).
4. Johnson v. Guzman Chavez, 141 S. Ct. 2271, 2280 (2021).

which they were adjudicated; thus, there was a pressing need for the Supreme Court to address this split.[5] While the Court's ruling in *Johnson v. Guzman Chavez* resolved the circuit split, by doing so, it narrowed eligibility for release on bond, excluding detained aliens subject to reinstated orders of removal seeking withholding-only relief, which will likely spark future debates among scholars who advocate for a policy change.[6]

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Court's decision in *Johnson v. Guzman Chavez* focuses on noncitizens subject to reinstated removal orders that challenged their detention in federal court requesting that the court order their release or allow them bond hearings while their withholding-only proceedings were pending.[7] To begin, it is important to note the relevant statutory provisions on which Respondents' eligibility to request release on bond depends; first, 8 U.S.C. § 1226(a) authorizes the arrest and detention of aliens "pending a decision on whether the alien is to be removed from the United States," with 8 U.S.C. § 1226(a)(2) providing that the alien may be released on bond or conditional parole.[8] The second statutory provision is 8 U.S.C. § 1231, which governs detention and removal of aliens "ordered removed" by an immigration judge,[9] and prescribes that "[e]xcept as otherwise provided in this section," the Attorney General[10] should remove aliens ordered removed from the country within ninety days, called the "removal period", during which "detention is mandatory."[11] The ninety-day removal period and the prescribed mandatory detention begin on the date the removal order is "administratively final" or, if a court orders a stay, on the date of such final order, or on the date the alien is released from non-immigration related detention or confinement, whichever of these three dates is later.[12] Generally, aliens not removed from the country within ninety days will be released under supervision.[13] However, the default ninety-day removal period can be extended if a specific provision applies, namely, if the alien does not apply for travel documents in a timely manner, or takes any action to prevent the removal; removal can also

5. *Id.* at 2283-84.
6. *Id.* at 2280.
7. *Id.* at 2283.
8. *Id.* at 2280 (quoting 8 U.S.C. § 1226(a)). *See* 8 C.F.R. §§ 1236.1(c)(8), 236.1(c)(8) (2016) (providing that in order to be released on bond, the alien must be able to prove that his or her "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding").
9. *Guzman Chavez*, 141 S. Ct. at 2280.
10. *Id.* at 2280, n.1 (noting that Congress has also authorized the Secretary of the Department of Homeland Security (DHS) to enforce the INA).
11. *Id.* at 2281 (quoting 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(2)).
12. *Guzman Chavez*, 141 S. Ct. at 2281. *See* 8 U.S.C. § 1231(a)(1)(B).
13. *Guzman Chavez*, 141 S. Ct. at 2282. *See* 8 U.S.C. § 1231(a)(3).

be stayed if it is not "practicable or proper," or the alien's testimony is needed in a prosecution; last, detention of inadmissible aliens, removable criminal aliens, or other aliens posing "a risk to the community or unlikely to comply with the order of removal" may be extended beyond the ninety-day period, or they can be granted supervised release; in these cases, extended detention is called the "post-removal-period."[14]

Removal and detention of individuals who have already been removed or left voluntarily based on prior removal orders and later returned to the country illegally are governed by the rules of expedited removal, providing that ". . . 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."[15] Nevertheless, the alien may seek statutory withholding of removal which, if granted, prohibits removal to a specific country if "the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion;" or, the alien may apply for withholding based on The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which bars removal to a country where the alien would be subjected to torture.[16]

Respondents were foreign citizens removed from the United States based on valid orders of removal who later reentered the country illegally because of their fear of remaining in their home country; thus, their prior orders of removal were reinstated according to 8 U.S.C. § 1231(a)(5).[17] Respondents applied for withholding of removal, and they were able to prove reasonable fear of persecution or torture; consequently, the cases were referred to an immigration judge to decide whether Respondent's were eligible for withholding-only relief.[18] As Respondents were held in detention, they applied for release on bond; however, the government denied their request, contending that Respondents were not entitled to bond hearings because they were "ordered removed" and detained under 8 U.S.C. § 1231, which prescribes mandatory detention and does not allow requests for bond hearings.[19] Respondents, in two groups, filed habeas petitions in The United States District Court for the Eastern District of Virginia,[20] both seeking a declaration that they were detained under 8 U.S.C. § 1226, and not 8 U.S.C.

14. *Guzman Chavez*, 141 S. Ct. at 2281. *See* 8 U.S.C. §§ 1231(a)(1)(C), 1231(c)(2)(A), 1231(a)(6).
15. *Guzman Chavez*, 141 S. Ct. at 2282 (quoting 8 U.S.C. § 1231(a)(5)).
16. *Id.* (quoting 8 U.S.C. § 1231(b)(3)(A)) (citing 8 C.F.R. §§ 208.16-17, 1208.16–17).
17. *Guzman Chavez*, 141 S. Ct. at 2283.
18. *Id.*
19. *Id.*
20. Romero v. Evans, 280 F. Supp. 3d 835, 836-37 (E.D. Va. 2017); Diaz v. Hott, 297 F. Supp 3d 618, 620 (E.D. Va. 2018) (respondents in this second group also filed for class action certification).

§ 1231, and also asking the court to grant an injunction to allow their bond hearings according to 8 U.S.C. § 1226.[21]

The district court granted summary judgment for Respondents in both cases,[22] holding that they were detained under 8 U.S.C. § 1226; thus, they were entitled to bond hearings while they were awaiting the disposition of their withholding-only applications.[23] The district court found that "until withholding-only proceedings are complete, a decision has not been made on whether they will in fact be removed from the United States," and that the government lacks "the present and final legal authority" to remove Respondents; therefore, the "administrative process is not complete" and the reinstated orders of removal are not final, even if the issue of removability has already been decided.[24]

The government appealed both decisions, and the cases were consolidated for appeal.[25] The United States Court of Appeals for the Fourth Circuit affirmed the lower court's judgment, holding that under 8 U.S.C. § 1226, Respondents were entitled to bond hearings, reasoning that the removal period, which requires mandatory detention, does not begin until the government has the actual legal authority to execute the removal after the withholding-only proceedings are over.[26] The Supreme Court granted writ of certiorari to resolve the circuit split and determine whether 8 U.S.C. § 1226 or 8 U.S.C. § 1231 governs the detention of aliens with reinstated orders of removal while seeking withholding-only proceedings and, ultimately, whether such noncitizens are entitled to bond hearings or not.[27]

III. THE COURT'S DECISION AND RATIONALE

A. Majority Opinion by Justice Alito

Justice Alito delivered the opinion of the Court, except as to footnote four,[28] joined by Chief Justice Roberts, and Justices Kavanaugh and Barrett.[29]

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21. *Guzman Chavez*, 141 S. Ct. at 2283.

22. *Romero*, 280 F. Supp. 3d at 849 (granting motion for summary judgment for noncitizen petitioners); *Diaz*, 297 F. Supp. 3d at 628 (granting motion to certify class and motion for summary judgment for noncitizen petitioners).

23. *Guzman Chavez*, 141 S. Ct. at 2283.

24. Guzman Chavez v. Hott, 940 F.3d 867, 871-72 (quoting *Romero*, 280 F. Supp. 3d at 846).

25. *Id.* at 872.

26. *Id.* at 882, 873.

27. *Guzman Chavez*, 141 S. Ct. at 2284.

28. *Id.* at 2280, n.4 (providing that the Supreme Court has jurisdiction to review the case). *See also* Jennings v. Rodriguez, 138. S. Ct. 830, 840-41 (2018) (plurality opinion) (holding that the Court has jurisdiction as Respondents are only challenging their detention without bail, they "are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined").

29. *Guzman Chavez*, 141 S. Ct. at 2280.

The Court held that the detention of aliens whose removal orders were reinstated are governed by 8 U.S.C. § 1231, and not 8 U.S.C. § 1226; thus, such aliens are not entitled to bond hearings while seeking withholding-only relief.[30] Therefore, the Court reversed the judgment of the Court of Appeals for the Fourth Circuit.[31]

To begin, in Part II of the opinion, Justice Alito addressed the two most significant issues of the case by concluding that Respondents were "ordered removed," and their reinstated removal orders were "administratively final."[32] First, turning to the plain meaning of the statutory text, the Court held that, when an alien is removed and later reenters the country without authorization, "the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed;" thus, Respondents' removal can be executed at any time.[33]

Respondents argued that during the withholding-only process, it might be determined that they cannot be removed to the country specified in their reinstated orders of removal.[34] To refute Respondent's' argument that their removal was still pending due to the inseparable nature of the two questions of "whether" or "where" they would be removed to, the Court emphasized the "country-specific" nature of the withholding-only relief.[35] The Court reasoned that withholding-only relief impacts solely the country where the alien will be removed to; thus, it does not invalidate or modify the prior removal order or the aliens' removability.[36] Referring to its prior holdings in *Nasrallah v. Barr*[37] and *INS v. Aguirre-Aguirre*,[38] the Court found that withholding-only relief prohibits removing the alien to a specific country, but nothing prevents removal to another country.[39] The Court further explained that reinstated orders of removal and withholding-only proceedings are two separate procedures; both require a separate order, but the first one is final and is no longer subject to changes once it is reinstated.[40] Additionally, the Court noted that the special statutory provisions in 8. U.S.C § 1231[41]

30. *Id.*
31. *Id.* at 2292.
32. *Id.* at 2284.
33. *Id.* at 2284 (quoting 8 U.S.C. § 1231(a)(5)).
34. *Guzman Chavez*, 141 S. Ct. at 2285.
35. *Id.* at 2285-86.
36. *Id.* at 2286.
37. Nasrallah v. Barr, 140 S. Ct. 1683, 1691 (2020) (holding that granting CAT order means that the noncitizen is not to be removed to a specific country at least until the conditions change in that country; however, the noncitizen can still be removed to any other country at any time).
38. INS v. Aguirre-Aguirre, 526 U.S. 415, 419 (1999) (holding that as opposed to asylum, which allows the noncitizen to remain in the United States, withholding-only relief only prohibits removing the alien to a particular country).
39. *Guzman Chavez*, 141 S. Ct. at 2286.
40. *Id*. at 2297-88.
41. 8 U.S.C. §§ 1231(a)(1)(C), 1231(c)(2)(A), 1231(a)(3).

governing the extension of the removal period, stay of removal, or supervised release, allow the government time to address and overcome possible obstacles of removal beyond the initial ninety-day removal period in order to execute removal of aliens "ordered removed."[42] To further support this interpretation, the Court revisited its ruling in *Zadvydas v. Davis*, which addressed a similar issue due to the government's inability to find a country to which the aliens could be removed.[43] In *Zadvydas v. Davis*, the Court, instead of applying 8 U.S.C. § 1226, held that aliens detained under 8 U.S.C. § 1231 may be released if their removal cannot be executed in the foreseeable future, so that they will not be detained indefinitely.[44] Therefore, the Court rejected the contention that until the government located a country to which to remove Respondents, their removability remained pending under 8 U.S.C. § 1226, because if both questions of "where" and "whether" they will be removed were governed by that same section until the issue of finding a removal country is resolved, then explicitly allowing aliens detained under 8 U.S.C. § 1231 to seek release based on prolonged detention would not make sense.[45]

Next, turning to the question of the finality of the reinstated removal order, the Court held that, based on the plain meaning of the statutory text, the legislature's intent was to consider the order "administratively" final once the agency's process comes to its end; namely, when the Board of Immigration Appeals (BIA) reviews the case or the time for seeking review by BIA has expired, and unless a court orders a stay, Respondents can be removed, with no opportunity to request a review of their reinstated order of removal and regardless of the withholding-only proceedings.[46] For further support, the Court turned to *Nasrallah v. Barr*,[47] in which case, analogously to the present case, noncitizens were ordered removed and pursued withholding relief under CAT; and the Court held that the order granting CAT relief is not a final order of removal, and it does not "affect the validity of the final order of removal," as they are two different orders.[48]

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42. *Guzman Chavez*, 141 S. Ct. at 2286.

43. *Id.* at 2287.

44. Zadvydas v. Davis, 533 U.S. 678, 701 (limiting the post-removal detention to a duration reasonably necessary for the alien's removal, and establishing that after six months, the alien can seek release from detention if there is no significant likelihood that the alien can be removed in the foreseeable future).

45. *Guzman Chavez*, 141 S. Ct. at 2287.

46. *Id.* at 2284-85.

47. *Nasrallah*, 140 S. Ct. at 1691 (holding that a final order of removal is an order finding the alien deportable, or ordering deportation of the alien; therefore, granting withholding relief under CAT is not a final order of removal).

48. *Guzman Chavez*, 141 S. Ct. at 2288 (quoting *Nasrallah*,140 S. Ct. at 1691).

Next, the Court addressed Respondents' argument that, based on the "except clause,"[49] the removal period had not started, and that they were not removable until the withholding-only process was pending because DHS would not have been able to actually remove them within ninety days.[50] The Court interpreted the clause as allowing an extension to the ninety-day default length of the removal period, as opposed to "triggering" the start date of such period.[51] Accordingly, it extends the time allowed to complete the removal process, providing that "DHS is not required to remove the alien within 90 days" if any of the special provisions apply, such as if the alien fails to secure travel documents in a timely manner or tries to prevent removal; also, removal can be stayed if it is not practicable or proper, or the alien's testimony is needed in a prosecution; finally, detention of certain inadmissible or criminal aliens, or other aliens posing certain risks can be extended.[52]

The Court next turned to the structure of the statute and noted that the placement of both provisions governing the detention of noncitizens "ordered removed" and withholding-only relief in 8 U.S.C. § 1231 confirms that the detention of aliens subject to withholding-only proceedings should be governed by the same section.[53] Furthermore, the order of the sections of Part IV of the INA are structured to provide a timeline for the removal process, from the arrival of aliens to removal, which shows that 8 U.S.C. § 1226 applies when the decision on removability itself is pending, but once it is decided, 8 U.S.C. § 1231 applies, and "the alien cannot go back in time, so to speak, to 8 U.S.C. § 1226."[54]

To continue, the Court turned to analyzing Congress's intention and the policy reasons behind providing two distinct sections to govern the detention of two different groups of aliens.[55] First, 8 U.S.C. § 1226 governs detention of aliens that pose a lighter flight risk as they still have a chance to remain in the country, while 8 U.S.C. § 1231 applies to individuals already ordered to be removed who pose a greater flight risk due to the fact that they are likely inadmissible, and they can only apply for withholding-only relief.[56] Additionally, as aliens in this second group are already in violation of U.S. immigration laws because they were once removed and then came back

49. 8 U.S.C. §1231(a)(1)(A) (providing that "[e]xcept as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.").
50. *Guzman Chavez*, 141 S. Ct. at 2288.
51. *Id.*
52. *Id.* (quoting 8 U.S.C. § 1231(a)(1)(A)).
53. *Guzman Chavez,* 141 S. Ct. at 2289.
54. *Id.* at 2289-90 (quoting *Guzman Chavez*, 940 F.3d at 888 (Richardson, J., dissenting)).
55. *Id.* at 2290.
56. *Id.*

illegally, "they are less likely to comply with the reinstated order;" thus, it is reasonable that Congress would provide more strict rules for their detention and removal.[57]

In response to Respondents' remaining argument that the government did not have the necessary legal authority to remove them as long as the withholding-only proceeding was ongoing, the Court first held that the withholding-only proceeding was not an "impediment" that must have been resolved before the removal period started, nor did it affect the government's full authority to remove Respondents to any other country.[58] Second, the Court also rejected the argument that because of the length of the withholding-only proceeding, which requires a longer time to conclude than ninety days, 8 U.S.C. § 1231 should not apply to aliens pursuing withholding-only relief, and found that the statute addresses this issue by authorizing DHS to release the alien under supervision or otherwise extend the time by allowing for a post-removal-period.[59]

Therefore, the majority held that Respondents' detention is governed by 8 U.S.C. § 1231, and they are not entitled to bond hearings.[60]

B. Concurring Opinion by Justice Thomas

Justice Thomas concurred except for footnote four and concurred in the judgment, joined by Justice Gorsuch.[61] In the short concurring opinion, Justice Thomas concluded that the Court did not have jurisdiction to review this case.[62] He explained that, under 8. U.S.C § 1252(b)(9), the Court has jurisdiction over "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien" only when reviewing a final order of removal or when exercising its jurisdiction expressly granted by another provision in 8. U.S.C § 1252, and that Respondents' case did not fall under either of these two categories that would enable judicial review .[63] Justice Thomas, referring to his previous concurring opinion in *Jennings v Rodriguez*, reasoned that challenging detention without bond and withholding-only relief claims are part "of the deportation process that necessarily serve[s] the purpose of ensuring an alien's removal;" therefore, the restriction limiting judicial review to final orders applies.[64] Thus, Justice Thomas concluded that the lower court's judgment should have been vacated

57. *Id.*
58. *Guzman Chavez*, 141 S. Ct. at 2290-91.
59. *Id.* at 2291.
60. *Id.* at 2280.
61. *Id.* at 2292 (Thomas, J., concurring).
62. *Id.*
63. *Guzman Chavez*, 141 S. Ct. at 2292 (Thomas, J., concurring) (quoting 8. U.S.C § 1252(b)(9)).
64. *Id.* (quoting *Jennings*, 138 S. Ct. at 854 (Thomas, J., concurring) (plurality opinion)).

and remanded due to lack of jurisdiction; otherwise, except for footnote four, he agreed with the majority's opinion.[65]

C. Dissenting Opinion by Justice Breyer

Justice Breyer dissented, joined by Justices Sotomayor and Kagan.[66] Justice Breyer agreed that the Court had jurisdiction to review the case; however, he disagreed with the majority's opinion that the case was governed by 8 U.S.C. § 1231; instead, he concluded that 8 U.S.C. § 1226 should have applied, and Respondents should have been entitled to bond hearings.[67] The dissent questioned the majority's interpretation that Congress's intention was to deny bond hearings and to subject noncitizens who have reasonable fear of persecution or torture in their designated country of removal to months or possibly years of detention while their withholding application is pending, when only a small percentage of aliens granted withholding-only relief are actually removed to an alternative country.[68] Further disagreeing with the majority, Justice Breyer concluded that reinstated orders of removal are not administratively final, and, until a decision is made on the withholding-only application, the removal period does not begin and mandatory detention without release on bond is not applicable.[69]

In Part II of his dissent, Justice Breyer continued his argument that the withholding-only relief can ultimately be seen as a modification of the prior removal order by changing the designated country of removal.[70] Thus, he reasoned that the ninety-day removal period should not apply to these cases; instead, a better conclusion is that the reinstated removal order is not administratively final until the agency's process is fully completed, and all "rights or obligations have been determined . . . from which legal consequences will flow," including the decision on eligibility for withholding-only relief.[71]

In addition, Justice Breyer also challenged the Court's interpretation of the "except clause," arguing that another possible reading of the clause is that it authorizes the government to "exempt the removal procedure altogether," instead of simply "extending" the length of the ninety-day removal period if a special provision is applicable.[72]

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65. *Id.*
66. *Id.* (Breyer, J., dissenting).
67. *Id.* at 2293.
68. *Guzman Chavez*, 141 S. Ct. at 2294-95 (Breyer, J., dissenting).
69. *Id.* at 2296.
70. *Id.* at 2297.
71. *Id.* (quoting Bennett v. Spear, 520 U.S. 154, 178 (1997)).
72. *Id.* at 2296-97.

IV. ANALYSIS

A. Introduction

Prior to *Johnson v. Guzman Chavez*, the federal circuit courts were in disagreement about whether noncitizens facing detention based on reinstated orders of removal are eligible to request bond hearings while their withholding applications are pending.[73] This ambiguity not only sparked heated debates, but also stood in the way of the uniform application of this area of immigration law.[74] In *Johnson v. Guzman Chavez*, the Supreme Court resolved the circuit split by holding that detention of aliens subject to reinstated orders of removal in withholding-only proceedings is governed by 8. U.S.C § 1231; thus, such aliens are not entitled to bond hearings.[75]

With its decision, the Court set a precedent for the federal courts, preventing future inconsistent judgments that provide different protections to detained immigrants based on the jurisdiction's approach.[76] However, the long-term effects of the decision will likely subject *Johnson v. Guzman Chavez* to criticism, as it significantly narrowed the eligibility to apply for release on bond, excluding aliens who were removed from or left the United States based on a prior removal order and later returned illegally, which can lead to their prolonged detention.[77]

This analysis argues that the Court interpreted the text of the statute in alignment with Congress's intent to treat "high-risk" individuals differently and came to a proper conclusion.[78] In support of that, the following discussion will concentrate on the main questions raised by the decision, namely, the finality of reinstated removal orders and future effects.

B. Discussion

i. Circuit Split Resolved: Reinstated Removal Orders Are Administratively Final

Prior to *Johnson v. Guzman Chavez*, the split among the circuit courts, caused by a lack of any Supreme Court precedents regarding whether noncitizens subject to reinstated orders of removal are entitled to bond hearings, resulted in different outcomes based on the approach the

73. *Guzman Chavez*, 141 S. Ct. at 2283-84 (majority opinion). *See also* David L. Hudson Jr., *Are Noncitizens in Pending Withholding-Only Immigration Proceedings Entitled to a Bond Hearing for Possible Release?* (19-897), 48 PREVIEW U.S. SUP. CT. CAS. 3 (2021).

74. *Guzman Chavez*, 141 S. Ct. at 2283-84.

75. *Id.* at 2280.

76. *Id.*

77. *Id.* at 2295 (Breyer, J., dissenting). *See also* Hudson Jr., *supra* note 73, at 5.

78. *Guzman Chavez*, 141 S. Ct. at 2290 (majority opinion).

jurisdiction followed because some courts allowed bond hearings for certain noncitizens while others denied the same for individuals in the same situation.[79] At the center of the disagreement stood one main issue: whether reinstated orders of removal are final orders of removal.[80] While the Second, Fourth, and Tenth Circuits held that reinstated removal orders were not final orders and 8 U.S.C. § 1226 applied when an alien was seeking withholding of removal, the Third, Sixth, and Ninth Circuits found that reinstated removal orders were final under 8 U.S.C. § 1231 and did not allow bond hearings to these noncitizens.[81]

The Supreme Court was faced with the exact same question in *Johnson v. Guzman Chavez*.[82] The Court held that reinstated orders of removal are final orders, and by doing so, narrowed the group of noncitizens eligible to release on bond, subjecting the rest to longer detention while their withholding-only application is pending.[83] This raises the difficult question Justice Breyer also asked in his dissenting opinion: "Does the statutory provision's *language* nonetheless require the majority's result?"[84]

While there are conflicting opinions on this issue, with arguments on both sides, the majority's opinion provided a sound legal analysis and reasoning that arguably support the conclusion that the Court's decision relies on a faithful interpretation of the statutory text, as it stands today. The INA does not provide a clear statutory provision or terminology that would unambiguously describe what constitutes a final order though it refers to it repeatedly, for example by stating that the removal period starts when the order of removal is "administratively final."[85] While the INA prescribes that

79. *Id.* at 2283-84. *See also* Hudson Jr., *supra* note 73, at 5.

80. *Guzman Chavez*, 141 S. Ct. at 2284.

81. *Compare* Guerra v. Shanahan, 831 F.3d 59, 64 (2d Cir. 2016) (holding that reinstated order of removal is not final while withholding-only proceeding is pending; thus, under 8 U.S.C. § 1226, Guerra is entitled to a bond hearing), *and Guzman Chavez*, 940 F.3d at 867 (holding that 8 U.S.C. § 1226 governs detention of aliens in withholding-only proceedings; thus, they are entitled to bond hearings), *and* Luna-Garcia v. Holder, 777 F.3d 1182, 1186 (10th Cir. 2015) (holding that reinstated order of removal is not final until the disposition of the reasonable fear proceedings) *with* Guerrero-Sanchez v. Warden York County Prison, 905 F.3d 208, 211 (3d Cir. 2018) (holding that reinstated order of removal is administratively final and 8 U.S.C. § 1231(a) governs the alien's detention while seeking withholding-only proceedings; but allowing bond hearing on "alternative grounds" due to prolonged detention based on 8 U.S.C. § 1231(a)(6)), *and* Martinez v. Larose, 986 F.3d 555, 557, 563-64 (6th Cir. 2016) (holding that reinstated order of removal is administratively final; thus, 8 U.S.C. § 1231(a) applies to aliens in withholding-only proceedings, also denying right to a bond hearing), *and* Padilla-Ramirez v. Bible, 882 F.3d 826, 832 (9th Cir. 2017) (holding that reinstated order of removal is administratively final, and detention in withholding-only proceedings is governed by 8 U.S.C. § 1231(a)).

82. *Guzman Chavez*, 141 S. Ct. at 2280.

83. *Id.*

84. *Id.* at 2295 (Breyer, J., dissenting).

85. Jesi J. Carlson, Patrick J. Glen & Kohsei Ugumori, *Finality and Judicial Review Under the Immigration and Nationality Act: Jurisprudential Review and Proposal for Reform*, 49 U. MICH. J.L. REFORM 635, 644 (2016).

an order of deportation "concluding that the alien is deportable or ordering deportation" is final, it does not provide a clear answer of whether it is applicable to reinstated orders of removal and other final orders of removal.[86] As "there are potentially competing conceptions of finality under the INA and its regulations," which differentiate between finality regarding executing an order and reviewing it, it might not be possible to answer this question by providing a single definition.[87] The Second Circuit in *Guerra v. Shanahan* and the Fourth Circuit in *Guzman Chavez v. Hott* rejected the idea of different "tiers of finality," and relied on the administration law principle that finality requires agency action which is the "consummation of the agency's decisionmaking process," requiring the adjudication of all questions, including the withholding-only application.[88] The Ninth Circuit, on the other hand, held in *Padilla-Ramirez v. Bible* that the agency concluded its process by making a decision on the removability; thus, the reinstated removal order is final for detention purposes, although it is not final in the context of judicial review concerning the withholding-only relief.[89]

In the absence of a prior Supreme Court precedent on point, the Court used the statutory text and structure to infer Congress's intent.[90] Justice Alito acknowledged that there is not a statutory definition available for the expression "administratively final"; however, he concluded that the question is more straightforward, because, by adding the word "administratively," Congress made it clear that courts should interpret it as the end of "the agency's review proceedings," instead of referring to it in the context of judicial review.[91] In other words, the removal order is final after the BIA reviews the order or the period provided for appeal expires.[92] Justice Breyer

86. *Id.* at 641-42 (quoting 8 U.S.C. § 1101(a)(47)(A)).

87. *Id.* at 647, 685.

88. *Guerra*, 831 F.3d at 63-64 (quoting *Bennett*, 520 U.S. at 178); *Guzman Chavez*, 940 F.3d at 881.

89. *Padilla-Ramirez*, 882 F.3d at 836.

90. *Guzman Chavez*, 141 S. Ct. at 2284 (majority opinion).

91. *Id. See also* STEPHEN H. LEGOMSKY & DAVID B. THRONSON, IMMIGRATION AND REFUGEE LAW AND POLICY 874-75 (7th ed. 2019) (explaining that in order to request judicial review, the noncitizen "must first exhaust all administrative remedies, . . . including appeal to the BIA," and "the removal order must be administratively final;" also, unless the court orders a stay, the noncitizen can be removed from the country before the court reviews the petition); Shoba Sivaprasad Wadhia, *The Rise of Speed Deportation and the Role of Discretion*, 5 COLUM. J. RACE & L. 1, 8 (2015) ("filing a petition for review does not automatically 'stay' a person's deportation, so DHS can execute a removal order notwithstanding a timely filed petition for review").

92. *Guzman Chavez*, 141 S. Ct. at 2285. *See* 8 C.F.R. § 1241.1 (2016) (providing that an order of removal becomes final when (a) the BIA dismisses the appeal; (b) the alien waives appeal; (c) the time for appeal expires without the alien filing an appeal; (d) if certified to the BIA or Attorney General, on the date of the subsequent decision ordering removal; (e) immediately after an immigration judge orders an alien removed in the alien's absence; (f) if an alternate order of removal in regards to a grant of voluntary departure is issued by an immigration judge, when the alien overstays the voluntary departure period, or fails to post the required bond; and if the alien files an appeal, the order becomes final when an order of

argued the opposite, pointing to *Bennett v. Spear*, that found that in order for the agency's decision to become final, it must be the "consummation of the agency's decisionmaking process," from which "rights or obligations have been determined" or "legal consequences will flow."[93] Justice Breyer also reasoned that seeking withholding relief, if granted, can modify the prior removal order by changing the country of removal originally provided in the removal order.[94] This clearly shows an unresolvable disagreement between the majority's and the dissent's points of view: the majority held that once the removal order is reinstated, the agency's decision-making procedures are concluded, and there is "nothing left" but to execute the prior order stating that the alien is to be removed, while the dissent argued that the agency's procedure is not final until all related questions are adjudicated, including the withholding-only relief.[95]

While the statute does not provide much clarity regarding this question, Justice Alito provided a more persuasive argument to defend the Court's standpoint, emphasizing that, when the order of removal is reinstated from its original date, it cannot be later reopened or reviewed, and the alien shall be removed based on the reinstated order any time after reentering the United States.[96] Nothing indicates that the removal order, as the ultimate decision regarding the alien's removability, sufficiently determining the rights, obligations, and other legal consequences resulting from the removal proceedings at its conclusion, once it is being reinstated, loses its finality during the withholding-only process.[97] Consequently, granting withholding-only relief itself does not affect the reinstated order of removal, as the immigration judge is not reviewing the prior removal order, nor the alien's removability; thus, the government still has the authority to remove the alien to any other country.[98] Accordingly, the only issue discussed during the withholding-only proceedings is to determine where the alien will be removed, and if the relief is granted, it only concerns a particular country where the alien cannot be sent.[99] Most importantly, the Court's opinion correctly notes that the removal order concluding that the alien is to be

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removal is issued by the BIA or the Attorney General, or upon overstay of the voluntary departure period granted or reinstated by the BIA or the Attorney General).

93. *Guzman Chavez*, 141 S. Ct. at 2297. (Breyer, J., dissenting) (quoting *Bennett*, 520 U.S. at 178)).

94. *Id.*

95. *Guzman Chavez*, 141 S. Ct. at 2285, 2297.

96. *Id.* at 2284 (majority opinion). *See also* LEGOMSKY & THRONSON, *supra* note 91, at 1039 (noting that the government could initiate new removal proceedings when noncitizens reenter the country illegally on the grounds that they are inadmissible and they are in violation of the immigration laws; however, the new process is time-consuming, while the prior removal order can be reinstated within a significantly shorter time).

97. *Guzman Chavez*, 141 S. Ct. at 2285.

98. *Id.* at 2285-86.

99. *Id.*

removed from the United States, and the order granting withholding-only relief, are two separate orders, which seems logical considering that in order to make the second decision, there must be a determination regarding the removal of the alien first "that can be withheld."[100] In sum, little support has been provided to show that an order of removal, once it is reinstated, would lose its finality during later proceedings.[101] On the contrary, as the Court held in *Nasrallah v. Bar,* a final order of removal is an order "concluding that the alien is deportable or ordering deportation," and the CAT order only means that the alien cannot be removed to a specific country, and definitely "not that a CAT order is the same as, or affects the validity of, a final order of removal."[102]

Although the Court's reasoning is convincing, as Justice Breyer explained, it is not completely without shortcomings, arguably, because of the lack of clear definitions in the INA.[103] The dissent pointed out that the majority's interpretation is flawed because it can result in cases where the reinstated removal order becomes administratively final long before it is reinstated during the withholding-only proceedings.[104] Beyond a doubt, this creates uncertainties regarding the ninety-day removal period, such as whether it starts on the date of the original order, then terminates, and starts over again when the removal order is reinstated, or even if it is applicable at all; thus, these unanswered questions suggest that the rules of reinstated orders of removal and withholding-only relief are not completely in accord with each other.[105] The Court did not elaborate on these specific concerns; however, it did reason that, if the withholding-only proceedings cannot be concluded in ninety days, the "except clause" authorizes "post-removal" detention; thus, these questions do not essentially affect the issue of finality as the removal period can be longer than ninety days while the withholding-only process is pending.[106] While it is a possible interpretation, Justice Breyer

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100. *Id.* at 2287-88 (quoting Matter of I–S & C–S–, 24 I & N Dec. 432-433 (BIA 2008)). *See also* Wadhia, *supra* note 91, at 13 (emphasizing that "a grant of withholding of removal requires an explicit order of removal, further indicating that, as a legal matter, this form of protection operates as a restriction on where a person may be removed and not as permission to remain in the United States indefinitely").

101. *Guzman Chavez*, 141 S. Ct. at 2288.

102. *Nasrallah*, 140 S. Ct. at 1691 (quoting 8. U.S.C § 1101(a)(47)(A)).

103. *Guzman Chavez*, 141 S. Ct. at 2297 (Breyer, J., dissenting). *See also* LEGOMSKY & THRONSON, *supra* note 91, at 875 (noting that under 8 U.S.C. § 1231(a)(1), the alien "shall" be detained during the removal period; however, it also indicates that that "'[u]nder no circumstances during the removal period shall the Attorney General release' certain . . . removable noncitizens;" therefore, it is unclear "whether the word 'shall' is to be taken literally"); Stephen H. Legomsky, *The Detention of Aliens: Theories, Rules, and Discretion*, 30. U. MIAMI INTER-AM. L. REV. 531, 534 n.16 (1999) (raising the question of whether this second part means that under certain circumstances noncitizens "who have been found inadmissible or deportable on other grounds" (criminal and security related reasons) "may be released").

104. *Guzman Chavez*, 141 S. Ct. at 2297 (Breyer, J., dissenting).

105. *Id.*

106. *Id.* at 2288-89 (majority opinion). *See* 8 U.S.C. § 1231(a)(1)(A).

questioned whether it is the only one, and why it cannot mean exempting removal itself.[107]

The structure of the INA, however, as the Court reasoned, provides some clarity on Congress's intent; because the "except clause" is located under the subsection "Removal period," it is more likely that it relates to the length and possible extension of the removal period, rather than providing that an alien may not be removed at all.[108] Arguably, the interpretation of extending the removal period to allow the government to resolve issues preventing removal makes more sense than asserting that aliens subject to reinstated removal orders can escape removal completely because the decision of which country they will be removed to is still pending.[109] The structure of the INA provides further support to this argument, since the rules of reinstated removal orders are in 8 U.S.C. § 1231, which governs the detention of aliens "ordered removed"; thus, the explanation seems logical that this includes all aliens whose removability was once decided by a removal order.[110]

In sum, the Supreme Court's interpretation of administrative finality of reinstated orders of removal provided long-awaited guidelines to federal courts to eliminate inconsistent judgments; however, as the dissent pointed out, the Court's opinion left a few unresolved questions regarding whether and how the rules of reinstated orders of removal should apply with full force in withholding-only proceedings.[111] Instead of leaving it to the courts to address these issues, a better solution is to resolve them in the form of a statutory reform, by accepting a specialized definition of finality for purposes of judicial review, adhering to a bright line rule that a decision is final when all administrative proceedings are completed, while declaring that 8 U.S.C. 1101(a)(47), which provides that a final order for detention purposes is a decision "concluding that the alien is deportable or ordering deportation,"[112] should be applied to administrative finality.[113] Ultimately, resolving the remaining statutory ambiguity this way would require legislative action by Congress.[114]

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107. *Guzman Chavez*, 141 S. Ct. at 2295-97 (Breyer, J., dissenting).
108. *Id.* at 2289 (majority opinion).
109. *Id.* at 2288.
110. *Id.* at 2289.
111. *Id.* at 2297 (Breyer, J., dissenting).
112. 8 U.S.C. § 1101(a)(47)(A) ("The term 'order of deportation' means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.").
113. Carlson et al., *supra* note 85, at 685.
114. *Id.* at 687.

ii. Policy Considerations, Due Process Concerns, and Impact on Future Cases

The Court's decision restricts the ability of noncitizens who are detained and subject to reinstated orders of removal to be released while awaiting the adjudication of their withholding-only applications.[115] Because the Court's ruling clearly denies them the opportunity to request bond hearings, it raises a concern that such aliens will now face prolonged detention.[116]

The question of extended or indefinite detention of noncitizens subject to reinstated removal orders has raised concerns and debates long before the Court decided *Johnson v. Guzman Chavez*.[117] By emphasizing the pressing need for unanimity and clear guidelines in this area of immigration law, one suggestion was that Congress should make legislative changes to ensure the unanimous application of the law.[118] It has also been proposed that, in order to protect individuals who fear persecution or torture in their designated country of removal, courts should hold that reinstated orders of removal are not considered final orders of removal while the withholding-only application is pending.[119] In spite of the suggestions that the best course of action is that courts consistently hold that such noncitizens are entitled to bond hearings to avoid inconsistent application of the law which leads to injustice and results in unnecessary detention of individuals, the Court in *Johnson v. Guzman* Chavez went the opposite way.[120] This raises the question: how does the Court's decision, by setting the precedent of denying bond hearings to aliens in withholding-only proceedings, affect due process considerations in future cases? [121]

As Justice Breyer concluded in his dissent, the Court's decision will likely subject noncitizens in withholding-only proceedings to prolonged detention, as they will not be able to obtain release on bond.[122] While aliens

115. *Guzman Chavez*, 141 S. Ct. at 2280 (majority opinion).

116. *Id.* at 2295 (Breyer, J., dissenting).

117. Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. CAL. L. REV. 181, 206 (2017).

118. John Gavin, Note*, Finally Freed of Infinitely Detained? The Need for a Clear Standard of Finality for Reinstated Orders of Removal,* 59. B.C. L. REV. 2437, 2468 (2018).

119. *Id.*

120. Mohamed T. Hegazi, Comment, *To Be or Not to Be Detained: Why Reinstated Removal Orders During Withholding-only Proceedings Are Not Administratively Final,* 15 SETON HALL CIRCUIT REV. 57, 74 (2019); *Guzman Chavez*, 141 S. Ct. at 2280.

121. *See Zadvydas*, 533 U.S. at 693 (holding that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"). *See also* Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 SUP CT. REV. 255, 259, 298 (1984) (procedural due process is an exception to Congress's absolute power to regulate immigration, and "aliens undergoing deportation proceedings are entitled to procedural due process").

122. *Guzman Chavez*, 141 S. Ct. 2295 (Breyer, J., dissenting).

were able to request bond hearings in some jurisdictions before, as a result of *Johnson v. Guzman Chavez* they are now also ineligible to do so.[123] As Justice Breyer stressed, the Court's decision to deny detained noncitizens who fled their country in fear of persecution or torture the opportunity to be released on bond and incarcerating them in immigration detention facilities where they have very little or no access to essential legal services to pursue their claims has far reaching consequences.[124] For instance, Justice Breyer pointed to studies showing that adjudication of the withholding-only proceedings is a lengthy process, and, as a result, aliens granted withholding relief in most cases remain in the United States.[125] The extended time of detention in these cases brings up more concerns, such as the increasing number of individuals held in detention centers, the costs of detention, and, last but not least, the conditions and restrictions aliens are faced with in detention centers, including lack of access to legal help.[126] As Justice Breyer also noted, this might be the reason why they are often unsuccessful in pursuing their claims.[127]

In addition, there are other serious implications and due process concerns attached to the finality of reinstated orders of removal.[128] First, reinstating the prior order takes only a short time,[129] providing the noncitizen with

123. *See, e.g.*, *Guerra*, 831 F.3d at 64 (holding that Guerra is entitled to a bond hearing); *Guzman Chavez*, 940 F.3d at 882 (allowing bond hearings for aliens subject to reinstated orders of removal in withholding-only proceedings).

124. *Guzman Chavez*, 141 S. Ct. at 2294-95 (Breyer, J., dissenting).

125. *Id.* at 2294-95 (stating that according to data provided by ACLU in 2015, average detention length was 114 days; however, in case an appeal, it was in the range of 301 to 447 days).

126. *See* Farrin R. Anello, *Due Process and Temporal Limits on Mandatory Immigration Detention,* 65 HASTINGS L.J. 363, 367 (2014) (contending that "detainees are confined in county jails and other facilities that are designed for corrections purposes," facing "unduly restrictive, corrections-like conditions, isolated from their families and communities, with inadequate access to law libraries and other services, and often intermingled with criminal inmates"); Legomsky, *supra* note 103, at 532, 541-42, 549 (emphasizing that while detention prevents detained noncitizens from absconding or endangering the public, long-term detention entails serious costs for both detained individuals and society (limitation on noncitizens' liberty and their ability to work, travel, or socialize, cruelty and unnecessary expenses of detention, limited access to legal services, documents, and other resources); also noting that the costs of mandatory detention could likely be avoided by individualized case-by-case adjudication).

127. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting).

128. Koh, *supra* note 117, at 206. *See also* Jennifer Stepp Breen & Stephen Yale-Loehr, *Reinstatement of Removal: New Developments in a Growing Form of Removal,* 19 BENDER'S IMMIGR. BULL. 02 (Apr. 15, 2014) (a noncitizen facing reinstatement of removal "no longer has the right to a hearing before an IJ, has no right to develop a record, and has no right to counsel." Nevertheless, reinstatement of the prior removal order is a common process which accounts for a large percentage of the total number of removals.); Jennifer Lee Koh, *When Shadow Removals Collide: Searching for Solutions to the Legal Black Holes Created by Expedited Removal and Reinstatement*, 24 BENDER'S IMMIGR. BULL. 01 (Feb. 1, 2019) (reinstatements make up a significant number of all removals, and because of the lack of statute of limitations, there is no time limit for reinstating the prior removal order).

129. *See* 8. C.F.R. § 241.8(a)(1)-(3) (2016) (providing that if the immigration officer determines that (1) the alien is subject to a prior removal order, (2) the alien is in fact the person who was previously removed or left the country voluntarily, and (3) the alien reentered the country unlawfully, provides an

minimal opportunity and no "waiting period" to contest the immigration officer's decision."[130] Second, the alien has no opportunity to request correction of possible errors in the original removal order, as it is not subject to review, and, by ruling out the chance to apply for any relief, except for withholding of removal, aliens subject to reinstated removal orders are "forever deportable" once reentering the United states.[131] Also, scholars argue that sometimes noncitizens are unaware of the fact that they have a prior order of removal "either because they never received the paperwork or had their order explained."[132]

Considering the above, Justice Breyer concluded that there is no reasonable explanation why Congress would want to deny bond hearings to noncitizens in withholding-only proceedings, and by doing so, subject them to spending a prolonged time in detention facilities.[133] While these policy concerns seem to be well founded, Justice Alito, following a more textualist approach, brought up a convincing counter-argument, emphasizing that the text of the statute itself is clear, and the Court cannot disregard the plain meaning of the statute and turn to statistical data and concerns regarding practicalities of removal instead.[134] Furthermore, based on other statutory provisions, Congress clearly expressed its general intention to deny the option of release on bond to detained aliens who are not likely to appear for future immigration proceedings.[135] The Court concluded that Congress's intent was to provide different rules for two distinct group of aliens posing different flight risks, prohibiting the possibility of release on bond for individuals who, based on their history of having been removed once and then returning to the country illegally, already proved that they are willing to break the law and might not comply with immigration orders.[136] It makes more sense, therefore, to conclude that Congress did not intend to allow bond hearings for these high flight-risk individuals for a reason; namely, to prevent absconding and ensure

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alien with written notice, allowing an opportunity to contest the determination, then reinstates the order, and the alien shall be removed).

130. Koh, *supra* note 117, at 204-05.

131. *Id.* at 203, 206.

132. *Id.* at 206 n.139 (quoting AM. CIVIL LIBERTIES UNION, AMERICAN EXILE: RAPID DEPORTATIONS THAT BYPASS THE COURTROOM 21 (2014)).

133. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting).

134. *Id.* at 2286 (majority opinion).

135. 8 C.F.R. §§ 1236.1(c)(8), 236.1(c)(8). *See* LEGOMSKY & THRONSON, *supra* note 91, at 1072 (noting that even when detention is not mandatory, noncitizens can only be released on bond if the government determines that they are not dangerous to the public and they will likely appear for future immigration proceedings).

136. *Guzman Chavez*, 141 S. Ct. at 2290. *See also* David A. Martin, *Graduated Application of Constitutional Protections for Aliens: The Real Meaning of Zadvydas v Davis,* 2001 SUP. CT. REV. 47, 79 (2001) (arguing that "the Due Process Clause may implement different levels of protection for different categories along the alienage-citizenship spectrum").

further participation in the removal proceedings, even if it inevitably means that by law they must face longer detention.[137]

This raises the question of whether ineligibility for a bond hearing, and, ultimately, prolonged detention mean that aliens should also fear indefinite detention as a result. This Note argues that the answer is no.[138] While the Court's decision in *Johnson v. Guzman Chavez* closed the door on obtaining release on bond for detained noncitizens subject to reinstated removal orders while awaiting the disposition of their withholding applications, another Supreme Court case, *Zadvydas v. Davis*, held that post-removal detention should be no longer than what is "reasonably necessary to bring about that alien's removal from the United States," and created a presumption that such reasonable time is no longer than six months; after that, if the alien shows that there is "no significant likelihood of removal in the reasonably foreseeable future," and the government is unable to rebut such showing, the alien must be released from detention.[139]

By reaffirming the applicability of its holding from *Zadvydas v. Davis*, the Court eliminated future due process concerns asserting that restricting eligibility for bond hearings will subject aliens to indefinite detention, as aliens detained under 8 U.S.C. § 1231 who are not eligible for bond hearings can request their release if, after six months of detention, there is no significant likelihood that they will be removed in the reasonably foreseeable future.[140] While it does not mean that all aliens are released after six months, it provides protection against being held for an unreasonably long or indefinite period of time when removal is unlikely to happen.[141] Additionally, such individuals may file a petition for writ of habeas corpus to challenge their detention in court; thus, there are other protections available to ensure

137. *Guzman Chavez*, 141 S. Ct. at 2290. *See* Legomsky, *supra* note 103, at 531-41 (discussing several theories that support the idea of detaining noncitizens in removal proceedings, such as preventing noncitizens from absconding, protecting the public against possible dangers posed by noncitizens who are in violation of the immigration laws, and preventing immigration violations. The goal to prevent absconding by prescribing mandatory detention is especially reasonable in case of noncitizens who have been ordered removed and a decision on their removability has been made. While mandatory detention of noncitizens in withholding only proceedings might be harder to reconcile because of their claim that they fled from persecution, it is not "irrational," as "[t]he finding of a credible fear surely increases the probability that the fear in fact is genuine, but it does not increase the probability to one hundred percent.").

138. *Guzman Chavez*, 141 S. Ct. at 2287.

139. *Zadvydas*, 533 U.S. at 701. *See* Martin, *supra* note 136, at 74 ("After six months, 'once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.' Absent a showing of foreseeable removal, release is required.") (quoting *Zadvydas*, 533 U.S. at 701). The Court extended *Zadvydas*'s holding to inadmissible noncitizens. LEGOMSKY & THRONSON, *supra* note 91, at 246 (citing Clark v. Martinez, 543 U.S. 371 (2005)).

140. *Guzman Chavez*, 141 S. Ct. at 2287.

141. *Id.* at 2282.

that the Court's decision in denying release on bond will not result in indefinite detention.[142]

V. CONCLUSION

As a case of first impression, the Supreme Court's decision in *Johnson v. Guzman Chavez* resolved a circuit split by holding that aliens subject to reinstated removal orders are not entitled to bond hearings while pursuing withholding-only relief.[143] The importance of the decision lies in announcing future policy and precedent for the federal courts confirming the "administrative" finality of reinstated removal orders to eliminate inconsistent adjudication of rights and protections during the removal process.[144] Ultimately, there is proper support to argue that the Court interpreted the relevant statutes to give the most effect to Congress's intent to ensure the effectiveness of the removal process by providing more strict rules for the detention of noncitizens entering the United States illegally in violation of their prior removal orders, as they already showed willingness to disregard federal laws and immigration orders.[145]

Nonetheless, narrowing the eligibility to request bond hearings has serious real-life consequences, and, even if the Court reaffirmed that indefinite detention is not permitted, many aliens affected by this decision will likely be detained for a longer time, possibly until their withholding-only application is decided.[146] Thus, while this note argues that the Court's decision stands on solid legal grounds as far as interpreting the meaning of the text and structure of the statute, when considering its far reaching effects from a more practical point of view, it is likely that immigration reform advocates will continue to stress the need for comprehensive legislative changes to eliminate unresolved ambiguities, including those concerning reinstated removal orders.

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142. Russell Abrutyn, *Removal Proceedings,* MICH. B.J. 34, 36 (2018).
143. *Guzman Chavez*, 141 S. Ct. at 2280.
144. *Id.* at 2284.
145. *Id.* at 2290.
146. *Id.* at 2295 (Breyer, J., dissenting).