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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 GUSTAVO NAVICHOQUE,
7 Plaintiff,
8
9 v.
10 JOHN F. KELLY, et al.,
11 Defendants.

Case No. [17-cv-03578-RS](#)

**ORDER TO SHOW CAUSE WHY
PETITION FOR HABEAS CORPUS
SHOULD NOT BE DISMISSED**

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13 On June 21, 2017, Gustavo Navichoque filed a petition for writ of habeas corpus seeking a
14 bond hearing pursuant to 8 U.S.C. § 1226(a). Navichoque, a native and citizen of Guatemala,
15 entered the United States without inspection in 2004 and was ordered removed in 2008. Shortly
16 thereafter, he reentered, was summarily removed, and then reentered again. On April 3, 2017,
17 Navichoque was apprehended and his prior removal order was reinstated pursuant to 8 U.S.C.
18 § 1231(a)(5). Upon demonstrating that he faces a reasonable fear of returning to Guatemala, his
19 case was transferred to an immigration judge to determine whether Navichoque is eligible for
20 withholding of removal. These “withholding-only” proceedings are ongoing.

21 Navichoque argues that his custody is now governed by 8 U.S.C. § 1226(a), rather than 8
22 U.S.C. § 1231, and that pursuant to section 1226(a), he is entitled to a bond hearing before an
23 immigration judge. In support, he relies on the Second Circuit’s opinion in *Guerra v. Shanahan*,
24 831 F.3d 59 (2nd Cir. 2016). There, the Second Circuit held that section 1226(a) governs
25 individuals in withholding-only proceedings. *Id.* at 63-64. Last week, however, the Ninth Circuit
26 reached a different conclusion. In *Padilla-Ramirez v. Bible*, No. 16-35385 (9th Cir. filed July 6,
27 2017), the Ninth Circuit held that the detention of aliens subject to reinstated removal orders is
28 governed by section 1231(a). The panel noted that its decision creates a circuit split with the

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Second Circuit’s decision in *Guerra*. Navichoque is ordered to show why his petition should not be dismissed in light of *Padilla-Ramirez*. Any filings attempting to show such cause shall not exceed five pages in length and shall be filed no later than July 24, 2017.

IT IS SO ORDERED.

Dated: July 10, 2017



RICHARD SEEBORG
United States District Judge