

District Judge Richard A. Jones
Magistrate Judge S. Kate Vaughan

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

JAVIER ZENDEJAS-VAZQUEZ,

Petitioner,

v.

CAMMILLA WAMSLEY¹, *et al.*,

Respondents.

Case No. 2:25-cv-01609-RAJ-SKV

FEDERAL RESPONDENTS' HABEAS
RETURN

Noted for Consideration:
November 7, 2025

I. INTRODUCTION

Petitioner Javier Zendejas-Vazquez asserts that his continued immigration detention at the Northwest ICE Processing Center ("NWIPC") violates his constitutional rights and the Immigration and Nationality Act ("INA"). Dkt. No. 1, Pet. Petitioner is a citizen of Mexico with lawful permanent resident status in the United States. In April 2023, Petitioner was convicted of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct in the Second Degree, in violation of Wash. Rev. Code ("RCW") § 9.68A.050(2)(a)(i). He was sentenced to eight months of confinement in Grant County Jail. In January 2024, the Department

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Defendants substitute Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement Cammilla Wamsley for Todd Lyons.

1 of Homeland Security (“DHS”) took Petitioner under its custody and ultimately found him
2 removable under 8 U.S.C. § 1227(a)(2)(E)(1) for being convicted of a crime of child abuse. The
3 Immigration Judge (“IJ”) ordered him removed and the Board of Immigration Appeals (“BIA”)
4 dismissed his administrative appeal on August 7, 2024. He filed a Petition for Review (“PFR”)
5 with the Ninth Circuit Court of Appeals that is currently pending. *See* No. 24-5366.

6 Petitioner’s habeas claim should be dismissed because he is being lawfully detained
7 pursuant to Section 236(a) of the INA, codified at 8 U.S.C. § 1226(a). He is neither entitled to
8 release from detention nor a second bond redetermination hearing. As recently as February 20,
9 2025, Petitioner received a full bond redetermination hearing and continues to have the
10 “substantial procedural protections” available under Section 1226(a). *Rodriguez Diaz v.*
11 *Garland*, 53 F.4th 1189, 1193 (9th Cir. 2022). As part of those procedural protections, the bond
12 redetermination denial was reviewed and affirmed by the BIA on July 3, 2025. He thus fails to
13 demonstrate that the process afforded to him violates his constitutional rights. Furthermore,
14 Petitioner’s detention is not indefinite as he purports. The only reason Petitioner has not already
15 been removed is because he requested a stay of removal with his PFR.

16 Accordingly, Federal Respondents respectfully request that this Court deny Zendejas-
17 Vazquez’s Petition for Habeas Corpus and grant its motion to dismiss.

18 **II. FACTUAL BACKGROUND**

19 Zendejas-Vazquez, a native and citizen of Mexico, was admitted into the United States
20 on an IR-1 visa and adjusted status to that of a lawful permanent resident in 2008. *See*
21 Declaration of Jiarong Du (“Du Decl.”), ¶ 4.

22 In April 2023, the Superior Court of Washington for Grant County convicted Zendejas-
23 Vazquez of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct in the
24 Second Degree, in violation of RCW §§ 9.68A.050(2)(a)(i) (2019), 9.68A.011(4)(f), (g) (2010),

1 and sentenced him to eight months of confinement in Grant County Jail and twelve months of
2 community custody.² Du Decl., ¶ 5; Declaration of Kristen R. Vogel (“Vogel Decl.”), Ex. A,
3 Felony Judgment and Sentence.

4 On January 22, 2024, DHS took Zendejas-Vazquez into custody, personally served him
5 with a Notice to Appear charging him as removable under 8 U.S.C. § 1227(a)(2)(E)(1) for being
6 convicted of a crime of child abuse, and filed the Notice to Appear with the Tacoma Immigration
7 Court, thereby commencing removal proceedings against him. Du Decl., ¶ 6; Vogel Decl., Ex. B,
8 Notice to Appear.

9 On May 6, 2024, the IJ denied Zendejas-Vazquez’s application for cancellation of
10 removal as a matter of discretion and ordered that he be removed to Mexico. Du Decl., ¶ 7;
11 Vogel Decl., Ex. C, IJ Decision. In finding him removable as charged, the IJ concluded that
12 Zendejas-Vazquez’s conviction for Dealing in Depictions of a Minor Engaged in Sexually
13 Explicit Conduct in the Second Degree amounted to a crime of child abuse under 8 U.S.C. §
14 1227(a)(2)(E)(1). Vogel Decl., Ex. C, at 2. On August 7, 2024, the BIA denied Zendejas-
15 Vazquez’s appeal and affirmed the IJ’s decision. Du Decl., ¶ 8; Vogel Decl., Ex. D, BIA
16 Decision.

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19 ² Under RCW § 9.68A.050(2)(a)(i) (2019), an adult commits the crime of dealing in depictions of a minor engaged
in sexually explicit conduct in the second degree

20 “when he . . . [k]nowingly develops, duplicates, publishes, prints, disseminates, exchanges,
21 finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in
22 an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).” That provision, in
23 turn, states: “Sexually explicit conduct” means actual or simulated: . . . (f) [d]epiction of the
genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor,
for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is
not necessary that the minor know that he or she is participating in the described conduct, or any
24 aspect of it; [or] (g) [t]ouching of a person’s clothed or unclothed genitals, pubic area, buttocks, or
breast area for the purpose of sexual stimulation of the viewer.

RCW §§ 9.68A.011(4) (f), (g) (2010).

1 On September 3, 2024, Zendejas-Vazquez filed a PFR of the BIA’s August 7, 2024,
2 decision, currently pending before the Ninth Circuit. *See* No. 24-5366. He also filed a motion to
3 stay removal. *Id.* at Dkt. 2.

4 On February 25, 2025, pursuant to Zendejas-Vazquez’s motion for custody
5 redetermination, the IJ conducted a bond redetermination hearing. Du Decl., ¶¶ 9-10. The IJ
6 required DHS to show by clear and convincing evidence that he is a danger or a flight risk. *Id.*,
7 ¶ 10. The IJ determined that DHS met its burden of proving that Zendejas-Vazquez is a danger to
8 the community and a flight risk and denied his bond request. *Id.*, ¶¶ 11-12; Vogel Decl., Ex. E,
9 Bond Memorandum. The BIA affirmed the IJ’s bond decision on July 3, 2025. Du Decl., ¶ 13;
10 Vogel Decl., Ex. F, BIA Bond Decision.

11 DHS presently cannot remove Zendejas-Vazquez due to a stay of removal issued by the
12 Ninth Circuit Court of Appeals that he requested. Du Decl., ¶ 14. Once the Stay of Removal has
13 been lifted, DHS intends to remove Zendejas-Vazquez. *Id.*, ¶ 15. DHS is in possession of
14 Zendejas-Vazquez’s unexpired Mexican Passport and has no reason to believe that he will not be
15 removed promptly once the stay of removal is no longer in place. *Id.* In response to Zendejas-
16 Vazquez’s habeas petition, the government also filed a Motion to Expedite Decision on
17 Petitioner’s Motion for a Stay of Removal in his PFR matter. *See* No. 24-5366, Dkt. 22.

18 **III. LEGAL STANDARD**

19 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
20 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
21 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
22 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the
23 present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).
24 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

1 **IV. ARGUMENT**

2 **A. DHS lawfully detains Zendejas-Vazquez pursuant to 8 U.S.C. § 1226(a).**

3 The INA governs the detention and release of noncitizens during and following their
4 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526-29 (2021). The
5 general detention periods are generally referred to as “pre-order” (meaning before the entry of a
6 final order of removal) and “post-order” (meaning after the entry of a final order of removal).
7 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-
8 order detention). This case concerns the Government’s responsibilities under 8 U.S.C § 1226(a).

9 Section 1226(a) “authorizes the Attorney General to arrest and detain noncitizen ‘pending
10 a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings v.*
11 *Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has
12 recognized that “there is little question that the civil detention of [noncitizens] during removal
13 proceedings can serve a legitimate government purpose, which is ‘preventing deportable . . .
14 [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the
15 chance that, if ordered removed, the [noncitizens] will be successfully removed.’” *Prieto-*
16 *Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citation omitted).

17 Every noncitizen apprehended under Section 1226(a) is individually considered for
18 release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). “Federal regulations provide that
19 [noncitizens] detained under § 1226(a) receive bond hearings at the outset of detention.”
20 *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). A U.S. Immigration and
21 Customs Enforcement (“ICE”) officer initially assesses whether the noncitizen has
22 “demonstrate[d]” that “release would not pose a danger to property or persons, and that the
23 [noncitizen] is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the ICE
24 officer denies bond, the noncitizen may ask an IJ for a redetermination of the custody decision.

1 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing for a noncitizen detained under
2 Section 1226(a) is also called a “redetermination hearing.” At this hearing, the noncitizen bears
3 the burden of establishing “that he or she does not present a danger to persons or property, is not
4 a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N.
5 Dec. 37, 38 (BIA 2006). Bond hearings are separate and apart from, and form no part of, a
6 noncitizen’s removal hearings. 8 C.F.R. § 1003.19(d).

7 The noncitizen may appeal the IJ’s custody redetermination to the BIA. 8 C.F.R.
8 §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).
9 Further, a noncitizen who remains detained under Section 1226(a) after the initial bond hearing
10 may request that the IJ conduct another custody redetermination whenever “circumstances have
11 changed materially since the prior bond redetermination.” 8 C.F.R. § 1003.19(e).

12 As set forth in the Factual Background above, Zendejas-Vazquez is properly detained
13 under Section 1226(a). As recently as February, the IJ determined that he is both a danger to the
14 community and a flight risk after a full bond hearing. Du Decl., ¶¶ 11-12; Vogel Decl., Ex. E.
15 This determination was affirmed by the BIA in July. Du Decl., ¶ 13; Vogel Decl., Ex. F.
16 Zendejas-Vazquez has provided no legal support that he is unlawfully detained while his final
17 order of removal is pending due to his PFR. He has also stated no change in circumstances that
18 would warrant another bond hearing eight months after his last redetermination hearing. Thus,
19 his detention does not violate the INA and claim two should be dismissed.

20 **B. Zendejas-Vazquez has not met his burden of establishing that his detention violates**
21 **his rights under the Fifth Amendment’s Due Process Clause.**

22 Zendejas-Vazquez’s continued detention pursuant to Section 1226(a) does not violate his
23 due process rights. Detention is a constitutionally permissible aspect of the Government’s
24 enforcement of the immigration laws and fulfills the legitimate purpose of ensuring that

1 individuals appear for their removal proceedings. *See Jennings*, 583 U.S. at 285-287; *Demore v.*
2 *Kim*, 538 U.S. 510, 523 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent
3 with the requirements of due process, Zendejas-Vazquez’s confinement is thus “reasonably
4 related” to a legitimate government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

5 Zendejas-Vazquez’s detention meets due process requirements. Courts in this District
6 generally apply the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), for detainees
7 who have previously received bond redetermination hearings. *See Ortuno-Perez v. ICE Field*
8 *Off. Dir.*, No. 2:23-cv-344, 2023 WL 5807305 (W.D. Wash. Aug. 1, 2023), *report and*
9 *recommendation adopted*, 2023 WL 5802516 (W.D. Wash. Sept. 7, 2023). “Due process is
10 flexible and calls for such procedural protections as the particular situation demands.” *Mathews*,
11 424 U.S. at 334. Under *Mathews*, “[t]he fundamental requirement of due process is the
12 opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.*, at 333 (internal
13 quotation marks omitted). This calls for an analysis of (1) “the private interest that will be
14 affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through
15 the procedures used, and probable value, if any, of additional or substitute procedural
16 safeguards,” and (3) the Government’s interest. *Id.* at 334-35.

17 The *Mathews* test does not demonstrate that Zendejas-Vazquez’s detention violates his
18 constitutional due process rights. With respect to the first factor – the private interest at stake –
19 while it is true as a general matter that freedom from physical restraint “lies at the heart of the
20 liberty that [the Due Process] Clause protects,” *Zadvydas*, 533 U.S. at 690 (internal quotation
21 marks omitted), “Congress regularly makes rules that would be unacceptable if applied to
22 citizens.” *Demore*, 538 U.S. at 522. Accordingly, while the “Fifth Amendment entitles
23 [noncitizens] to due process of law in deportation proceedings, detention during deportation
24 proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.* at 523. Any

1 assessment of the private interests at stake must therefore account for the fact that the Supreme
2 Court has never held that noncitizens have a constitutional right to be released from custody
3 during the pendency of removal proceedings and has in fact held precisely the opposite. *Id.* at
4 530; *Carlson v. Landon*, 342 U.S. 524, 538 (1952).

5 In evaluating Zendejas-Vazquez’s interests under the first *Mathews* factor, this Court
6 should not “simply count his months of detention and leave it at that.” *Rodriguez Diaz*, 53 F.4th
7 at 1208. This Court “must also consider the process he received during this time, the further
8 process that was available to him, and the fact that his detention [has been] prolonged due to his
9 decision to challenge his removal order.” *Id.* As described above, Zendejas-Vasquez has
10 received substantial process to date.

11 As for the second factor, Zendejas-Vazquez has had substantial procedural safeguards
12 available to him and he has – and continues – to avail himself of these protections. Since his
13 detention commenced, he has received a bond hearing and a bond redetermination hearing, been
14 issued an order of removal by the IJ, and had these decisions reviewed by the BIA. Most relevant
15 here, an IJ deemed that Zendejas-Vazquez is a danger to the community and a flight risk after a
16 thorough bond hearing in February 2025. The Ninth Circuit has found the existing agency
17 procedures for Section 1226(a) detention sufficiently protect a detainee’s liberty interest and
18 mitigates the risk of erroneous deprivation. *Rodriguez Diaz*, 53 F.4th at 1209. Although
19 Zendejas-Vazquez argues that “Respondents have been unable or unwilling to execute that
20 [removal] order,” Pet., at 1, it is Zendejas-Vazquez that requested a stay of removal pending his
21 PFR.

22 Finally, the government has a compelling interest in detaining Zendejas-Vazquez pending
23 his removal. That compelling interest is rooted in ensuring that the criminal noncitizens that
24 Congress deemed most dangerous and most likely to abscond complete their removal

1 proceedings. *Demore*, 538 U.S. at 520; *see also Rodriguez Diaz*, 53 F.4th at 1208. Zendejas-
2 Vazquez was convicted of a crime that amounts to child abuse. Accordingly, all *Mathews* factors
3 favor the government. Furthermore, “[t]he risk of a detainee absconding also inevitably escalates
4 as the time for removal becomes more imminent.” *Rodriguez Diaz*, 53 F.4th at 1208. Here,
5 Zendejas-Vasquez’s last chance of evading removal is through the pending Ninth Circuit stay
6 and PFR. If the stay is lifted, he will be removed to Mexico.

7 In *Prieto-Romero v. Clark*, the Ninth Circuit affirmed that “[a]n alien whose removal
8 order is administratively final, but whose removal is stayed pending the court of appeals’
9 resolution of his petition for review,” such as the case here, “may be subject to detention under
10 § 1226(a).” 534 F.3d 1053, 1067-68 (9th Cir. 2008). While acknowledging that § 1226(a) does
11 not manifest a clear congressional intent to authorize prolonged and indefinite detention, the
12 Court in that case rejected the petitioner’s challenge to his three-year detention under § 1226(a).
13 *Id.* at 1068. Similarly, Zendejas-Vazquez’s “detention remains statutorily authorized, because he
14 has not established that there is no significant likelihood of his removal in the reasonably
15 foreseeable future. The government will be able to remove him to Mexico in the event that his
16 petition for review of his administratively final order of removal is denied.” *Id.*

17 **V. CONCLUSION**

18 For the foregoing reasons, Federal Respondents respectfully request that the Court
19 dismiss Zendejas-Vazquez’s petition.

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1 DATED this 10th day of October, 2025.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

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16 I certify that this memorandum contains 2,664
17 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE


I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on today's date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Javier Zendejas-Vazquez, Pro Se Petitioner


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DATED this 10th day of October, 2025.

s/ Albert Paul Kidd

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