

District Judge Tana Lin
Chief Magistrate Judge Theresa L. Fricke

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

ADRIAN ALBERTO OSUNA GOMEZ,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR AND
FACILITY ADMINISTRATOR,

Respondent.

Case No. 2:25-cv-02242-TL-TLF

RESPONDENT'S RETURN
MEMORANDUM

Noted for Consideration:
January 12, 2026

I. INTRODUCTION

United States Immigration and Customs Enforcement ("ICE") has lawfully detained Petitioner for approximately 73 days pending his administrative removal proceedings pursuant to 8 U.S.C. § 1226(c). He is subject to mandatory detention because of his 2024 California conviction for assault with force likely to produce great bodily injury under California Penal Code § 245(a)(4). Petitioner alleges that his continued detention violates his due process rights. He asks this Court to order him "released on supervised release pending all finality" or for this Court to "[order] the Agency to hold a bond hearing... pending the conclusion of his legal matters with

1 ICE, and the District Courts and the Ninth Circuit.” Pet. at 2. The Court should deny these
2 requests.

3 Petitioner’s constitutional claim lacks merit. Petitioner was convicted of an aggravated
4 felony that constitutes a crime of violence and his continued detention pending final
5 administrative order of removal is mandatory under 8 U.S.C. § 1226(c). 8 U.S.C. § 1226(c); 8
6 U.S.C. § 1101(a)(43)(F) (definition of aggravated felony, crime of violence); *see also Jennings*
7 *v. Rodriguez*, 138 S. Ct. 830, 846 (2018) (“§ 1226(c) makes clear that detention of [noncitizens]
8 within its scope *must* continue ‘pending a decision on whether the [noncitizen] is to be removed
9 from the United States’” (quoting 8 U.S.C. § 1226(a)) (emphasis in original)). ICE charged
10 Petitioner with removability based on his criminal conviction, and the Immigration Judge ordered
11 him removed him in accordance with that charge. Because Petitioner reserved appeal and his
12 appeal period has not yet expired, removal proceedings remain pending at this time. Petitioner is
13 not entitled to a bond hearing and is not entitled to release. Accordingly, Federal Respondents
14 respectfully request that his habeas petition be denied.

15 II. FACTUAL BACKGROUND

16 Petitioner is a native and citizen of Mexico who was admitted to the United States as a
17 Legal Permanent Resident (LPR) on May 23, 2012. Hubbard Decl., ¶ 4; *see also* Collins Decl.,
18 Exh. B, Form I-213. On December 9, 2024, Petitioner was convicted in convicted in the California
19 State Superior Court at Sacramento for the offense of assault with force likely to produce great
20 bodily injury, in violation of California Penal Code Section 245(a)(4) and was sentenced to a term
21 of imprisonment of two years. Hubbard Decl., ¶ 5; Collins Decl., Exh. A, Conviction Documents.

22 On October 2, 2025, ICE took Petitioner into custody from Pelican Bay State Prison,
23 and issued him a Notice to Appear. *Id.*, ¶ 8; Collins Decl., Exhs. B, I-213, and D, Notice to
24 Appear. ICE charged Petitioner with being removal under 8 U.S.C. § 1227(a)(2)(A)(iii), for

1 having been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the
2 Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)(F)), to wit, a crime of violence for
3 which the term of imprisonment ordered is at least one year. *See id.* Petitioner requested a
4 hearing before the Immigration Court. Collins Decl., Exh. C, Request for Disposition.

5 On October 31, 2025, Petitioner appeared before the Immigration Judge. Hubbard Decl.,
6 ¶ 10. At the hearing, Petitioner admitted to the allegations contained in the Notice to Appear and
7 conceded the sole charge of removability –that he was convicted of an aggravated felony. *Id.*;
8 Collins Decl., Ex. D, Notice to Appear. The Immigration Judge sustained the charge of
9 removability. *Id.*, ¶ 10.

10 On December 1, 2025, Petitioner appeared before the Immigration Judge for an
11 individual merits hearing. Hubbard Decl., ¶ 11. At that hearing, the Immigration Judge denied
12 Petitioner’s applications for relief from removal and ordered Petitioner removed to Mexico and
13 *Id.*, ¶ 11. Petitioner reserved appeal of this decision and has until December 31, 2025, to file an
14 appeal. *Id.*, ¶ 10. Because Petitioner’s appeal period has not expired, his removal order is not yet
15 final. He remains in administrative removal proceedings and is mandatorily detained pursuant to
16 8 U.S.C. § 1226(c). *Id.*, ¶ 12.

17 III. LEGAL STANDARD

18 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
19 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that he is being
20 held in custody in violation of the Constitution, laws, or treaties of the United States. *See* 28
21 U.S.C. § 2241(c)(3).

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IV. ARGUMENT

Petitioner's detention is constitutional and statutorily mandated pursuant to 8 U.S.C. § 1226(c). *Demore v. Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.").

Section 1226 provides the framework for the arrest, detention, and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section 1226(a) grants DHS the discretionary authority to determine whether a noncitizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceedings. In contrast, detention pursuant to Section 1226(c) is mandatory for noncitizens that commit certain criminal offenses. Section 1226(c) includes any non-citizen who "is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(B). This detention may end prior to the conclusion of removal proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings*, 583 U.S. at 305-06 (internal quotation marks and citations omitted).

Here, Petitioner was charged as being removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), due to his assault conviction constituting an aggravated felony, crime of violence, to which he was sentenced to more than one year. *See* Hubbard Decl., ¶¶ 5, 8, 12; 8 U.S.C. § 1101(a)(43)(F); *see also United States v. Heron-Salinas*, 566 F.3d 898 (9th Cir. 2009) (*per curiam*); *U.S. v. Grajeda*, 581 F.3d 1186, 1190 (9th Cir. Cal. 2009); *United States v. Jimenez-Arzate*, 781 F.3d 1062 (9th Cir. 2015) (*per curiam*); *United States v. Vasquez-Gonzalez*, 901 F.3d 1060 (9th Cir. 2018).¹ The Immigration Judge ultimately found him removable on this basis.

¹ In *United States v. Gomez*, 115 F.4th 987, 995 (9th Cir. 2024), the Ninth Circuit held that a conviction under Cal. Penal Code § 245 is not a "crime of violence" for Guidelines purposes after *Borden v. United States*, 593 U.S. 420 (2021). However, because the Ninth Circuit has granted en banc review of its decision in *Gomez*, it cannot be relied on, and prior Ninth Circuit case law controls. *See United States v. Gomez*, 133 F.4th 1083 (9th Cir. 2025).

1 Hubbard Decl., ¶ 10. Accordingly, Petitioner's detention is statutorily mandated by Section
2 1226(c) until his removal proceedings become administratively final. *See* Hubbard Decl., ¶¶ 8,12.
3 Because Petitioner reserved appeal of his removal order from the Immigration Judge and his time
4 to file an appeal has not yet lapsed, his removal order is not yet final at this time. *See* 8 CFR §
5 1241.1.²

6 Furthermore, Petitioner's continued detention pursuant to § 1226(c) does not violate his
7 due process rights. Petitioner's assertion that his detention violates *Zadvydas* is misplaced. Pet. at
8 5-6. *Zadvydas* involved the duration of detention after a removal order is issued. *See Zadvydas v.*
9 *Davis*, 533 U.S. 678, 689-701 (2001). Consequently, the fact that Petitioner's removal is not likely
10 to occur in the reasonably foreseeable future does not make his pre-order detention
11 unconstitutional. That is not the appropriate standard for review of due process claims concerning
12 prolonged detention under Section 1226(c). *See Martinez v. Clark*, 18-cv-1669, 2019 WL
13 5968089 (W.D. Wash. May 23, 2019) (Report and Recommendation) (applying multi-factor due
14 process analysis), adopted by, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019).

15 An alien is entitled to release if he can show that his immigration detention is indefinite
16 as defined in *Zadvydas*. *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *6 (W.D.
17 Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr.
18 11, 2022). Detention becomes indefinite in situations where the country of removal refuses to
19 accept the noncitizen or if removal is legally barred. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th
20 Cir. 2008). That is not the situation here. Although Petitioner's detention continues while his
21 removal proceedings are ongoing, he cannot allege that his detention has become indefinite,

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23
24 ² If Petitioner's appeal deadline lapses and no appeal is filed, his order will become administratively final and his
detention authority will convert to 8 U.S.C. § 1231(a), under which he will remain mandatorily detained. *See* 8
CFR § 1241.1; 8 U.S.C. § 1231(a)(2).

1 unlike the detainees in *Zadvydas* who were subject to post-order removal. His Section 1226(c)
2 detention will end once his administrative proceedings are complete.

3 **V. CONCLUSION**

4 For the foregoing reasons, Petitioner is lawfully detained in ICE custody and his habeas
5 petition should be denied.

6
7 DATED this 15th day of December, 2025

8 Respectfully submitted,

9 CHARLES NEIL FLOYD
10 United States Attorney

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21 *Attorneys for Respondent*

22 *I certify that this memorandum contains 1293*
23 *words, in compliance with 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 arranged for service on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Adrian Alberto Osuna Gomez, Pro Se Petitioner



Northwest Detention Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 15th day of December, 2025

Respectfully submitted,

s/ Katie Reed-Johnson

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