

Chief District Judge David G. Estudillo

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSE RAMON CASTELLANO PENALOZA

Petitioner,

v.

ICE FIELD OFFICER DIRECTOR,

Respondent.

Case No. 2:25-cv-02629-DGE

RESPONDENT’S RETURN

Noted for consideration on:  
January 20, 2026

**I. INTRODUCTION**

U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Petitioner Jose Ramon Castellano Penaloza, a native and citizen of Venezuela subject to an order of removal, under Section 241 of the Immigration and Naturalization Act (“INA”). *See* 8 U.S.C. § 1231. He seeks release or a bond hearing where he may be released “pending conclusion of his legal matters.” *Pet.*, at 2. Petitioner is not entitled to release or a bond hearing because he is currently detained pursuant to the statutorily required 90-day removal period and during the “presumptively reasonable” six-month detention period announced by the Supreme Court in *Zadvydas v. Davis*,

1 533 U.S. 678, 700-01 (2001). Detention during this period is mandatory and constitutionally  
2 permissible.

3 Accordingly, the Petition should be denied.

## 4 II. FACTUAL AND PROCEDURAL BACKGROUND

### 5 A. Detention Authorities and Removal Procedures

6 The INA contains a complex scheme of authorities governing the detention and release of  
7 aliens during and following their removal proceedings. These periods are generally referred to as  
8 “pre-order” (meaning before the entry of a final order of removal) and “post-order” (meaning after  
9 the entry of a final order of removal). Compare 8 U.S.C. § 1226 (authorizing pre-order detention)  
10 with § 1231(a) (authorizing post-order detention). Once a final order of removal has been entered,  
11 an alien enters what Congress has called the “removal period.” 8 U.S.C. § 1231(a)(1). During  
12 this period of 90 days, Congress has directed that the Secretary of Homeland Security “shall  
13 remove the alien from the United States.” *Id.* ICE<sup>1</sup> is charged with attempting to effectuate  
14 removal of an alien from the United States. 8 U.S.C. § 1231(a)(1). To ensure an alien’s presence  
15 for removal and to protect the community from dangerous aliens while removal is being achieved,  
16 Congress directed:

17 During the removal period, the [Secretary of Homeland Security]<sup>2</sup> shall detain the  
18 alien. *Under no circumstance during the removal period* shall the [Secretary]  
19 release an alien who has been found inadmissible under section 1182(a)(2) or  
20 212(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B)  
21 of this title.

22 8 U.S.C. § 1231(a)(2) (emphasis added).

23 <sup>1</sup> Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to  
24 execute removal orders.

<sup>2</sup> Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining aliens, the  
Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority  
to the Secretary of the Department of Homeland Security. *See also* 6 U.S.C. § 251.

1 Section 1231(a)(6) authorizes the Department of Homeland Security (“DHS”) to continue  
2 detention of aliens after the expiration of the removal period. Unlike Section 1231(a)(2),  
3 Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length  
4 of detention under that provision:

5 An alien ordered removed who is inadmissible under section 1182, removable  
6 under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been  
7 determined by the [the Secretary of Homeland Security] to be a risk to the  
community or unlikely to comply with the order of removal, *may* be detained  
*beyond the removal period* and, if released, shall be subject to the terms of  
supervision in paragraph (3).

8 8 U.S.C. § 1231(a)(6) (emphasis added).

9 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the  
10 Supreme Court has held that an alien may be detained only “for a period reasonably necessary to  
11 bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme  
12 Court has further identified six months as a presumptively reasonable time to bring about an alien’s  
13 removal. *Id.*, at 701.

14 If an alien cannot be removed to the country designated in his removal order because the  
15 country refuses to accept the alien, the alien has been granted relief from removal to that country,  
16 the country refuses to recognize the alien as its citizen, or another reason, Congress has directed  
17 ICE to pursue removal to alternate countries. *See* 8 U.S.C. §§ 1231(b)(2)(D), (E); 1231(b)(3); 8  
18 C.F.R. §§ 241.13(a), 241.15.

19 In this case, an immigration judge granted Petitioner’s application for pre-conclusion  
20 voluntary departure on December 11, 2025. Lambert Decl., Ex. A, Order of the Immigration  
21 Judge. The order required Petitioner to depart from the United States by January 12, 2026. *Id.*  
22 The order further stated that failure “to depart by the required date will result in an alternate order  
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1 of removal to Venezuela taking effect immediately.” *Id.* Because Petitioner did not depart, the  
2 order converted to a final order of removal on January 13, 2026. Leyba Decl., ¶ 17.

3 **B. Petitioner Castellano Penalzo**

4 Petitioner is a native and citizen of Venezuela who claims to have entered the United States  
5 without inspection or parole in 2023. Leyba Decl., ¶¶ 3-4. He filed an asylum application with  
6 U.S. Citizenship and Immigration Services in 2023. Leyba, ¶ 5.

7 On August 14, 2025, U.S. Border Patrol made contact with Petitioner and issued him a  
8 notice to appear, charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i). Leyba Decl., ¶ 6;  
9 Lambert Decl., Ex. B, Form I-213; Ex. C, Notice to Appear. Petitioner was not detained and the  
10 Form I-213 does not indicate that Border Patrol released him from detention. Thus, Petitioner was  
11 not taken into custody at this time.

12 On October 24, 2025, Border Patrol took Petitioner into custody and transported him to the  
13 ICE office in Portland, Oregon. Leyba Decl., ¶ 8; Lambert Decl., Ex. D, Warrant for Arrest; Ex.  
14 E, Form I-213. He was thereafter transferred to the Northwest ICE Detention Center. Leyba Decl.,  
15 ¶ 10.

16 Petitioner appeared at his initial master calendar hearing in immigration court on December  
17 3, 2025. Leyba Decl., ¶ 11. He submitted a bond hearing request, and the case was continued for  
18 Petitioner to retain counsel. Leyba Decl., ¶¶ 11-12. Approximately one week later, the  
19 immigration judge held a bond hearing and found that Petitioner was subject to mandatory  
20 detention under 8 U.S.C. § 1225(b). Leyba Decl., ¶ 13; Lambert Decl., Ex. F, Order of the IJ.  
21 That same day, the immigration judge held Petitioner’s reset master calendar hearing, where  
22 Petitioner was granted pre-conclusion voluntary departure with an alternative order of removal to  
23 Venezuela. Leyba Decl., ¶ 14; Lambert Decl., Ex. A.

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1 ERO is not currently effectuating routine removals to Venezuela because of national  
2 conflict and is not aware when transport will resume. Leyba Decl., ¶ 15. When ICE spoke to  
3 Petitioner about voluntarily departing to another country, Petitioner declined to voluntarily depart  
4 to anywhere other than Venezuela. *Id.* On December 27, 2025, ICE provided Petitioner with  
5 proper notice that a third country removal to Mexico was anticipated. Lambert Decl., Ex. G,  
6 Notice of Removal.<sup>3</sup> Petitioner did not claim fear of removal to Mexico. Leyba Decl., ¶ 16.

7 On January 13, 2026, the immigration judge's order converted to a removal order after  
8 Petitioner failed to voluntarily depart. Lambert Decl., Ex. A. He then became subject to a final  
9 order of removal. At this time, the detention authority shifted to mandatory detention pursuant to  
10 8 U.S.C. § 1231(a)(2).

### 11 III. ARGUMENT AND AUTHORITY

12 Petitioner's detention is mandated by 8 U.S.C. § 1231(a)(2) and comports with  
13 constitutional standards. Therefore, Petitioner cannot make out a claim for habeas relief, and this  
14 Court should deny the petition as premature.

#### 15 A. Section 1231(a)(2) prohibits the relief Petitioner seeks.

16 Petitioner fails to state a basis for habeas relief because the plain language of 8 U.S.C.  
17 § 1231(a)(2) requires his detention during the current 90-day removal period. *See* 8 U.S.C.  
18 § 1231(a)(2). Petitioner became subject to a final order of removal on January 13, 2026, when he  
19 failed to depart the United States. Lambert Decl., Ex. A. Accordingly, the 90-day removal period  
20 designated in 8 U.S.C. § 1231(a)(2) will not end until April 13, 2026. During this period, detention  
21 is mandatory and no bond hearing is authorized. Thus, Petitioner's detention is mandatory and the  
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24 <sup>3</sup> The Leyba Declaration (¶ 16) states that the notice was served on December 27, 2025, whereas the Notice (Exhibit G) is dated December 28, 2025. The date on the notice is apparently a clerical error.

1 Petition should be denied. *Khotosouvan v. Morones*, 386 F.3d 1299, 1301 (9th Cir. 2004)  
2 (affirming dismissal of habeas petition brought during 90-day removal period).

3 Considering the limited time and legitimate purpose of the 90-day removal period, the  
4 Ninth Circuit has repeatedly found that detention during the removal period “passes constitutional  
5 scrutiny,” even in cases when an alien’s removal “is not reasonably foreseeable.” *See*  
6 *Khotosouvan*, 386 F.3d at 1299; *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1116 (9th Cir. 2010)  
7 (recalling that “Section 1231(a)(2) poses no due process issues, regardless of whether removal of  
8 the detained alien is foreseeable, because the statute authorizes detention for only the ninety-day  
9 removal period and therefore does not create any danger of unconstitutionally indefinite  
10 detention.”).

11 Accordingly, the Petition should be denied.

12 **B. Post-order detention authorized by statute and limited to a definite period does not**  
13 **raise a constitutional claim.**

14 Because Petitioner remains detained during the removal period, any *Zadvydas*-based claim  
15 is not ripe for review. Post-order detention of an alien for up to six months is presumptively  
16 reasonable. The Supreme Court has adopted six months as a “presumptively reasonable period of  
17 detention” *after* which an alien could bring a constitutional challenge to his detention. *Zadvydas*,  
18 533 at 701. Petitioner’s six-month “presumptively reasonable period of detention” runs from  
19 January 13, 2026 (the date the removal order became final) through July 13, 2026. Since Petitioner  
20 has not been detained for six months after his administrative removal order became final, his  
21 petition raises no constitutional claim for habeas relief based on the length of his detention.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Petition should be denied without an evidentiary hearing.

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DATED this 14th day of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD  
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*Attorneys for Respondent*

*I certify that this memorandum contains 1,616 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:

Ramon Jose Castellano Penaloza, *Pro Se Petitioner*  
[REDACTED]  
NW ICE Processing Center  
1623 E. J Street, [REDACTED]  
Tacoma, WA 98421-1615

DATED this 14th day of January, 2026.

s/ Joseph A. Fonseca  
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