

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE A. AGUIRRE BERNABE,

Petitioner,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT FIELD OFFICE
DIRECTOR,

Respondent.

Case No. 2:26-cv-00031-RSM

RESPONDENT'S RETURN

Noted for Consideration:
January 26, 2026

I. INTRODUCTION

Petitioner Jose A. Aguirre Bernabe, a citizen of Mexico, who is unlawfully present in the United States and is subject to a final removal order, has been lawfully detained by U.S. Immigration and Customs Enforcement (ICE) to facilitate his removal to Mexico. Petitioner's habeas petition asks the Court to "grant a bond review and to release [him] upon conditions that is fair and just." Dkt. 1, pg. 3. His petition should be denied.

First, Petitioner's detention is lawful. He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1231. His detention is not indefinite under *Zadvydas v. Davis*, 533 U.S.

1 678, 701 (2001). He has been detained since November 12, 2025, and has been subject to a final
2 order of removal since January 8, 2026. He is still in the 90-day removal period where detention
3 is mandatory. It is likely Petitioner will be removed to Mexico in the reasonably foreseeable future.
4 Thus, his detention is not unconstitutionally indefinite. *See Zadvydas*, 533 U.S. at 701.

5 Second, Petitioner has been granted a bond hearing before an immigration judge and the
6 judge denied bond finding that it lacked jurisdiction to order bond, but even if it had jurisdiction,
7 it would deny bond as Petitioner has not proven that he is not a danger to the community.

8 II. FACTUAL AND PROCEDURAL BACKGROUND

9 Petitioner Jose A. Aguirre Bernabe is a native and citizen of Mexico who entered the United
10 States without being admitted or paroled on or about August 23, 1994, as an infant. *See Declaration*
11 *of Deportation Officer Sheldon Benjamin* (Benjamin Decl.) ¶ 4; *Declaration of Kristin B. Johnson*
12 *(Johnson Decl.) Ex A*. Petitioner was a recipient of Deferred Action for Childhood Arrivals
13 (DACA) in 2014, 2017, and 2019. *Id.* But Petitioner's DACA renewal was denied on
14 September 15, 2021, after he was charged with several felony and misdemeanor crimes. *See*
15 *Benjamin Decl. ¶ 5; Johnson Decl. Ex. A*.

16 On September 13, 2021, Petitioner was charged with felony assault in the second and third
17 degree, misdemeanor criminal mischief in the second degree, misdemeanor driving under the
18 influence of alcohol, misdemeanor reckless endangerment, and misdemeanor reckless driving. *See*
19 *Benjamin Decl. ¶ 6; Johnson Decl. Ex. A*. Petitioner was ultimately convicted of driving under the
20 influence and fourth degree assault on January 26, 2024. *Id.* Petitioner was sentenced to five days
21 of jail and twenty-four months of probation. *Id.*

22 Following his convictions, Petitioner came to the U.S. Immigration and Customs
23 Enforcement (ICE), Enforcement and Removal Operations (ERO) as an at-large criminal alien.
24 *See Johnson Decl. Ex. A*. Petitioner was located by ERO on November 12, 2025. *Id.* Petitioner

1 was personally served with a Notice to Appear pursuant to Section 212(a)(6)(A)(i) of the
2 Immigration and Nationality Act (INA) and was detained and booked at the Northwest ICE
3 Processing Center pursuant to Section 241 of the INA. *See* Benjamin Decl. ¶¶ 7-8; Johnson Decl.
4 Exs. A, B.

5 Petitioner filed a custody redetermination request on December 11, 2025. Benjamin Decl.
6 ¶ 9. On December 18, 2025, an Immigration Judge from the United States Department of Justice
7 Executive Office for Immigration Review (EOIR) of Tacoma, Washington, denied Petitioner's
8 custody redetermination request based on lack of jurisdiction. *See* Benjamin Decl. ¶ 10; Johnson
9 Decl. Ex. C.

10 On January 8, 2026, an Immigration Judge from EOIR Tacoma, Washington, denied
11 Petitioner's request for voluntary departure and ordered the Petitioner removed to Mexico. *See*
12 Benjamin Decl. ¶ 11; Johnson Decl. Ex. D.

13 III. LEGAL STANDARD

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

20 To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her custody
21 is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

22 IV. ARGUMENT

23 A. Petitioner is subject to mandatory detention during the removal period.

24 The INA governs the detention and release of noncitizens during and following their

1 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
 2 detention periods are generally referred to as “pre-order” (meaning before the entry of a final order
 3 of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal).
 4 Compare 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a) (authorizing post-order
 5 detention).

6 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
 7 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
 8 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
 9 removal and to protect the community from noncitizens who may present a danger, Congress has
 10 mandated detention while removal is being effectuated:

11 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
 12 [noncitizen]. Under no circumstance during the removal period shall the [Secretary]
 13 release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or
 14 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B)
 15 of this title.

16 8 U.S.C. § 1231(a)(2).

17 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
 18 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
 19 and does not place any temporal limit on the length of detention under that provision:

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

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

¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, 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, of which ICE is a component. *See also* 6 U.S.C. § 251.

1 During the removal period, ICE² is charged with attempting to effect removal of a
2 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
3 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be
4 detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from
5 the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further
6 identified six months as a presumptively reasonable time to bring about a noncitizen’s removal.
7 *Id.* at 701.

8 Here, Petitioner is the subject of an administrative order of removal that became final on
9 January 8, 2026. *See* Johnson Decl. Ex D; 8 C.F.R. § 1241.1 (an order of removal becomes final
10 upon waiver of appeal by the respondent). He is only twelve days into his 90-day removal period
11 for which detention is mandatory while ICE works to effectuate his removal to Mexico. Petitioner
12 is well within the “presumptively reasonable” six-month custody period. *Zadvydas*, 533 U.S. at
13 701.

14 **B. Petitioner is not entitled to a bond hearing.**

15 Petitioner requested a bond hearing while his removal proceedings were pending and was
16 given a bond hearing before an immigration judge. *See* Benjamin Decl. ¶¶ 9, 10; Johnson Decl.
17 Ex. C. On December 18, 2026, the Immigration Judge issued a decision finding that he lacked
18 jurisdiction to grant bond because Petitioner was subject to mandatory detention under *Matter of*
19 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.* In *Hurtado*, the BIA determined that
20 immigration judges lack the authority to grant bond for noncitizens like Petitioner who are present
21 in the United States without admission because they are “applicants for admission as defined under
22

23
24 ² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration
2 of their removal proceedings.” 29 I&N Dec. at 220.

3 Alternatively, the immigration judge found that even if there was jurisdiction to grant bond,
4 the Judge would deny bond because Petitioner has not proven that he is not a danger to the
5 community. *See Johnson Decl. Ex. C.*

6 Respondent acknowledges that this Court granted summary judgment and found that
7 detention pursuant to 8 U.S.C. § 1225(b)(2) of the defined class in *Rodriguez Vazquez v. Bostock*
8 is unlawful. *Rodriguez Vazquez v. Bostock*, No. 25-5240-TMC, 2025 WL 2782499 (W.D. Wash.
9 Sep. 30, 2025). The decision has been appealed. *Rodriguez Vazquez*, No. 25-5240-TMC, Dkt. 71.
10 Additionally, in *Maldonado Bautista v. Santacruz*, another district court found the same and
11 extended declaratory relief to a similarly defined and certified nationwide Bond Eligible Class.
12 *Maldonado Bautista v. Santacruz*, No. 25-1873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25,
13 2025). That case is also on appeal. *Maldonado Bautista*, No. 25-1873-SSS-BFM, Dkt. 95.

14 While acknowledging the Court’s decision in *Rodriguez Vazquez* and *Maldonado Bautista*,
15 Respondent continues to believe Petitioner is subject to mandatory detention pursuant to 8 U.S.C.
16 § 1225(b). *See Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sep. 30,
17 2025) (holding petitioner detained under 8 U.S.C. § 1225(b)(2)); *Sixtos Chavez v. Noem*, --- F.
18 Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025) (same).

19 Congress has determined that all noncitizens subject to Section 1225(b) are subject to
20 mandatory detention. Regardless of whether a noncitizen falls under Section 1225(b)(1) or (b)(2),
21 the sole means of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian
22 reasons or significant public benefit,’ § 1182(d)(5)(A).” *See Jennings v. Rodriguez*, 583 U.S. 281,
23 283 (2018).

1 Further, several provisions at 8 U.S.C. § 1252 preclude review. First, 8 U.S.C. § 1252(g)
2 bars review of Petitioner's claims because they arise from the government's decision to commence
3 removal proceedings. Second, 8 U.S.C. § 1252(b)(9) bars the Court from hearing Petitioner's
4 claims because his claims challenge the decision and action to detain him, which arises from the
5 government's decision to commence removal proceedings, thus an "action taken . . . to remove an
6 alien from the United States." Third and lastly, 8 U.S.C. § 1252(e)(3) applies and limits "[j]udicial
7 review of determinations under section 1225(b) of this title and its implementation." The plain
8 language of the statute precludes judicial review for noncitizens determined to be detained
9 pursuant to Section 1225(b)(2) and applies to a "determination under section 1225(b)" and to its
10 implementation.

11 **C. Petitioner has failed to exhaust his administrative remedies.**

12 As discussed above, the Immigration Judge here made an alternative finding at Petitioner's
13 bond hearing and found that even if there was jurisdiction to grant bond, the judge would deny
14 bond because Petitioner has not proven that he is not a danger to the community. *See Johnson*
15 *Decl. Ex. C*. This Court has recently held that habeas relief is not available to detainees in a similar
16 posture. *See Cantero Garcia v. Wamsley*, No. 25-2092-TMC, 2025 WL 3123996 (W.D. Wash.
17 Nov. 7, 2025). Like Petitioner here, an Immigration Judge denied bond on jurisdictional grounds
18 to one of the *Cantero Garcia* petitioners, but the Judge issued an additional finding that the
19 petitioner would have been denied bond if the Judge had jurisdiction because he posed a danger to
20 the community. *Id.* at *1.

21 In denying habeas relief in *Cantero Garcia*, the Court noted that "the essence of habeas
22 corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional
23 function of the writ is to secure release from illegal custody." *Id.* at *2 (quoting *Preiser v.*
24 *Rodriguez*, 411 U.S. 475, 484 (1973)). The Court then held that although the petitioner was

1 appealing the Immigration Judge's bond denial, "the IJ's determination that he presents a danger
2 to the community [was] a separate basis for the 'legality of [his] custody.'" *Id.* (quoting *Preiser*,
3 411 U.S. at 484). Because the petitioner presented no other facts to question that his custody
4 violated any law, habeas relief was not appropriate. *Id.* (citing *Preiser*, 411 U.S. at 489).

5 The Court's rationale in *Cantero Garcia* equally applies to Petitioner here. He can present
6 his arguments to the Board of Immigration Appeals (BIA) that he is not a danger to the community
7 and a flight risk, and then if he is dissatisfied with the result, seek habeas relief with this Court at
8 that time. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Until the BIA decides
9 otherwise, Respondent presently has a separate basis, based on the Immigration Judge's order, to
10 keep Petitioner detained.

11 Petitioner should be required to appeal the Immigration Judge's alternative ruling to the
12 BIA and await the BIA's decision before asking this Court to intervene via a habeas petition.
13 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas
14 petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available
15 judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d
16 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*,
17 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a
18 "jurisdictional" prerequisite." *Id.*

19 Courts may require prudential exhaustion where: "(1) agency expertise makes agency
20 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of
21 the requirement would encourage the deliberate bypass of the administrative scheme; and
22 (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude
23 the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

1 The Court should not allow Petitioner to move forward with this litigation without first
2 exhausting his administrative remedies at the BIA. *See Cristobal v. Asher*, No. 20-cv-1493-RSM-
3 BAT, 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec. adopted by*
4 2021 WL796597 (W.D. Wash. Mar. 2, 2021). In *Cristobal*, the petitioner had been detained for
5 15 months and was denied bond at an initial bond redetermination hearing, but he never sought a
6 second bond redetermination hearing based on changed circumstances before filing a habeas
7 petition. In comparison, Petitioner here has been given a bond hearing and the Immigration Judge
8 issued alternative findings, which Petitioner can appeal to the BIA. Petitioner has failed to avail
9 himself of the available administrative remedies before seeking habeas review in this Court.
10 Therefore, this Court should also dismiss this Petition.

11 Furthermore, this case meets the elements requiring prudential exhaustion. The BIA “has
12 a special expertise in reviewing the question of whether the bond record as a whole makes it
13 substantially unlikely that the Department w[ill] prevail on [the petitioner’s] challenge to
14 removability.” *Francisco Cortez v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL 1508458, at *3
15 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Also, allowing a “relaxation of the
16 exhaustion requirement” would promote the avoidance of seeking a bond redetermination by the
17 Immigration Judge or an appeal of similar Immigration Judge orders to the BIA. Finally, the
18 outcome of an appeal before the BIA may provide Petitioner with the relief sought here.

19 Accordingly, the Petition should be dismissed because Petitioner is not subject to
20 indefinite detention and he has failed to exhaust his administrative remedies with respect to seeking
21 bond during the removal period.

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V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny
Petitioner's habeas petition and dismiss this matter without an evidentiary hearing.

DATED this 20th of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Kristin B. Johnson

KRISTIN B. JOHNSON, WSBA #28189

Assistant United States Attorney

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, Washington 98101-1271

Telephone No. (206) 553-7970

Fax No. (206) 553-4073

Email: kristin.b.johnson@usdoj.gov

Attorneys for Respondent

I certify that this memorandum contains 2,663 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 that on this date, I electronically filed the foregoing and the supporting declarations of Sheldon Benjamin and Kristin B. Johnson (with Exhibits A-D), with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the foregoing on the following non-CM/ECF participant via Certified Mail, Return Receipt Requested, postage prepaid, marked "Legal Mail, Open in Presence of Detainee," and addressed as follows:

Jose A. Aquirre Bernabe, *Pro Se Petitioner*
A# [REDACTED]
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 20th day of January, 2026.

s/ Caitlin Froelich
CAITLIN FROELICH, Paralegal Specialist
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-7970
Fax: 206-553-4067
Email: caitlin.froelich@usdoj.gov