

The Honorable Theresa L. Fricke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YUNIOR ALEXANDER GUTIERREZ
NAVARRO,

Petitioner,

v.

KRISTI NOEM, Secretary for the Department
of Homeland Security; TODD LYONS,
Acting Director, Immigration and Customs
Enforcement; LAURA HERMOSILLO,
Acting Field Office Director, Immigration
and Customs Enforcement Seattle Field Office;
BRUCE SCOTT,¹ Warden, Northwest ICE
Processing Center,

Respondents.

Case No. 2:26-cv-00334-TLF

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
February 17, 2026

I. INTRODUCTION

Noncitizens apprehended at the border and placed in removal proceedings under 8 U.S.C.
§ 1225(b)(1) “shall be detained” for the duration of those proceedings. Despite this command, U.S.
Immigration and Customs Enforcement (ICE) exercised its discretion to grant Petitioner parole

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney’s Office.

1 into the United States while his asylum claim was pending and during his removal proceedings.
2 But ICE recently revoked his parole and Petitioner is now lawfully detained during his removal
3 proceedings.

4 Petitioner's habeas petition should be denied for four reasons: (1) Petitioner is subject to
5 mandatory detention under 8 U.S.C. § 1225(b), INA § 235; (2) Petitioner is not entitled to advance
6 notice or a pre-detention hearing for parole revocations and his re-detention comports with due
7 process; (3) Petitioner has failed to exhaust his administrative remedies and has not sought a bond
8 redetermination hearing before an Immigration Judge; and (4) Petitioner is not entitled to
9 immediate release.

10 II. BACKGROUND

11 A. Mandatory detention under 8 U.S.C. § 1225(b), INA § 235.

12 Petitioner is an applicant for admission who is subject to mandatory detention pursuant to
13 8 U.S.C. § 1225(b). *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir.
14 Feb. 6, 2026); *Zapata v. Chestnut*, 2025 WL 3687643, at *3-4 (E.D. Cal. Dec. 19, 2025); *Matter*
15 *of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025). Applicants for admission fall into one of two
16 categories. Section 1225(b)(1) covers noncitizens initially determined to be inadmissible due to
17 fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by
18 the Attorney General in her discretion. Separately, Section 1225(b)(2) serves as a catchall
19 provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with
20 specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

21 Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory
22 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means
23 of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or
24

1 significant public benefit,' § 1182(d)(5)(A)." *Jennings*, 583 U.S. at 283.

2 **B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A).**

3 While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory
4 detention, they may be subject to parole by the Attorney General or the Department of Homeland
5 Security (DHS), and that is not an issue that the Immigration Judge has authority to consider. *See*
6 INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a) (2025) (designating who may
7 exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney
8 General may grant aliens detained under Section 235(b)(1) temporary parole into the United States
9 "for urgent humanitarian reasons or significant public benefit" (quoting INA § 212(d)(5)(A),
10 8 U.S.C. § 1182(d)(5)(A)). This discretionary parole is statutorily required to be "temporary
11 parole" under 8 U.S.C. § 1182(d)(5)(A), and the statute does not grant the Attorney General or
12 DHS the discretion to grant indefinite parole to those subject to mandatory detention.

13 **C. Petitioner Yunior Gutierrez Navarro.**

14 Petitioner is a native and citizen of Venezuela who arrived at the Laredo, Texas, Port of
15 Entry on or about July 27, 2023, seeking admission to the United States. *See* Declaration of
16 Deportation Officer Kurtis Reed (Reed Decl.) at ¶ 4; Declaration of Kristin B. Johnson (Johnson
17 Decl.), Ex. A. Petitioner lacked any documentation which would allow him entry into the United
18 States, and as such was issued a Notice to Appear (NTA) charging him with being inadmissible
19 pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). On July 27,
20 2023, the same day Petitioner presented himself at the border, Petitioner was paroled into the
21 United States for two years pending removal proceedings. Reed Decl. at ¶ 5.

22 On April 1, 2025, Petitioner applied for Temporary Protected Status (TPS) with U.S.
23 Citizenship and Immigration Services (USCIS). Reed Decl. at ¶ 6. Although it was initially
24 granted, USCIS terminated Petitioner's TPS on November 20, 2025. Reed Decl. at ¶ 7.

1 Petitioner was detained by immigration officers on January 2, 2026, during a targeted
2 operation in Shoreline, Washington. Reed Decl. at ¶ 8. Petitioner was taken into custody without
3 incident and transferred to the NWIPC. *Id.* On February 3, 2026, Petitioner attended an
4 Immigration Court hearing. Reed Decl. at ¶ 9. Petitioner admitted to the charges contained in the
5 NTA and conceded that charge of removability. *Id.* Despite having been present in the United
6 States for two-and-a-half years, and notwithstanding his representation by counsel in the habeas
7 case, Petitioner requested a continuance to seek legal representation. *Id.* Petitioner's next
8 immigration hearing is on March 5, 2026. *Id.*

9 Petitioner is an Arriving Alien and is mandatory detention pursuant to 8 U.S.C. § 1225(b),
10 INA § 235(b)(2)(A). Reed Decl. at ¶ 12. Petitioner has not requested a custody redetermination
11 before an immigration judge. Reed Decl. at ¶ 11.

12 **III. LEGAL STANDARD**

13 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
14 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
15 *Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope
16 of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day."
17 *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n.20 (2020). Title 28 U.S.C.
18 § 2241 provides district courts the authority to grant habeas relief "within their respective
19 jurisdictions." To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his
20 or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28
21 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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IV. ARGUMENT

A. Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b), INA § 235(b)(2)(A).

Congress enacted a multi-layered statutory scheme that provides for the civil detention of noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his or her detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057.

Aliens who are apprehended shortly after illegally crossing the border and who are determined to be inadmissible due to lacking a visa or valid entry documentation, 8 U.S.C. § 1182(a)(7)(A), may be removed pursuant to an expedited removal order unless they express an intention to apply for asylum or a fear of persecution in their home country. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). “The purpose of these provisions is to expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his or her claim promptly assessed by officers with full professional training in adjudicating asylum claims.” H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209 (1996).

Applicants for admission fall into one of two categories. Section 1225(b)(1) covers aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by the Attorney General in her discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings*, 583 U.S. at 287.

Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means

1 of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or
2 significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283.

3 Inadmissible aliens, like Petitioner, are subject to mandatory detention pursuant to
4 Section 1225(b)(2). *Buenrostro-Mendez*, 2026 WL 323330 at *6-7. In *Buenrostro-Mendez*, the
5 Fifth Circuit recently held that noncitizens who entered without inspection and were later placed
6 in removal proceedings remained “applicants for admission” subject to mandatory detention under
7 Section 1225(b)(2)(A), even though they had previously been released from detention. The Fifth
8 Circuit reversed the district court orders finding Section 1225(b) to be unlawful for certain aliens,
9 explaining that Section 1225(b) establishes a categorical detention mandate that is not displaced
10 by temporary release mechanisms such as parole or orders of recognizance. *Id.* at *7.

11 The reasoning in *Buenrostro-Mendez* demonstrates that an individual who entered without
12 inspection remains an applicant for admission unless and until lawfully admitted. Thus, Petitioner
13 is lawfully detained pursuant to 8 U.S.C. § 1225(b), INA § 235(b)(2)(A), and is subject to
14 mandatory detention while his removal proceedings and asylum claim are processed in the
15 immigration courts.

16 **B. Petitioner is not entitled to advance notice or a pre-detention hearing prior to re-**
17 **detention.**

18 Petitioner’s re-detention under Section 1225(b) without a pre-detention hearing was lawful.
19 *See Zapata*, 2025 WL 3687643, at *3-4.² The fact that Petitioner was initially released by ICE on
20 conditional parole does not change this fact. There is no statutory or regulatory requirement that a
21 noncitizen be provided with a pre-detention hearing before re-detention. ICE’s authority to re-
22 arrest is not limited to circumstances where a material change in circumstances has occurred.

23
24 ² The Federal Respondents acknowledge that courts in this judicial district have held otherwise. The Federal Respondents respectfully disagree with these holdings.

1 The facts here are simple: Petitioner was subject to mandatory detention, Petitioner was
 2 granted discretionary parole, ICE exercised its discretionary authority to revoke his parole, and he
 3 was re-detained and is subject to mandatory detention during his removal proceedings and while
 4 his asylum claim is being processed by the immigration courts. Although courts in this District
 5 have held otherwise, there is no requirement for Petitioner to be given a pre-detention hearing prior
 6 to his parole being revoked and being re-detained.³

7 Contrary to Petitioner's assertion, a pre-deprivation hearing to determine whether
 8 Petitioner is a flight risk or dangerous was not required prior to his arrest on January 2, 2026.
 9 There is no statutory or regulatory requirement for a hearing prior to re-detention, and the Supreme
 10 Court has warned courts against reading additional procedural requirements into the INA. *See*
 11 *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing
 12 requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to
 13 impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vt.*
 14 *Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned
 15 up)).

16 **C. Petitioner's re-detention comports with due process.**

17 Petitioner's re-detention does not violate his substantive and procedural due process rights.
 18 Petitioner inaccurately argues that the standard for parole under 8 C.F.R. § 212.5(b) is that the
 19 government must prove that he is a flight risk or danger to the community. Instead, the default for
 20

21 ³ Furthermore, while courts in this District have held otherwise, several provisions at 8 U.S.C. § 1252 preclude review.
 22 First, 8 U.S.C. § 1252(g) bars review of Petitioners' claims because they arise from the government's decision to
 23 commence removal proceedings. Second, 8 U.S.C. § 1252(b)(9) bars the Court from hearing Petitioners' claims
 24 because they challenge the decision and action to detain them, which arises from the government's decision to
 commence removal proceedings, thus an "action taken . . . to remove an alien from the United States." Third and
 lastly, 8 U.S.C. § 1252(e)(3) applies and limits "[j]udicial review of determinations under Section 1225(b) of this title
 and its implementation." The plain language of the statute precludes judicial review for aliens determined to be
 detained pursuant to Section 1225(b)(2) and applies to a "determination under section 1225(b)" and to its
 implementation.

1 mandatory detention detainees is no release. The Attorney General may provide parole only on a
2 case-by-case basis for “urgent humanitarian reasons” or “significant public benefit.” 8 C.F.R.
3 § 212.5(b).

4 *1. Substantive Due Process*

5 ICE has a legitimate interest in Petitioner’s detention. For more than a century, the
6 immigration laws have authorized immigration officials to charge aliens as removable from the
7 country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See*
8 *Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960)
9 (discussing longstanding administrative arrest procedures in deportation cases). “Detention during
10 removal proceedings is a constitutionally valid aspect of the deportation process.” *Velasco Lopez*
11 *v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*,
12 538 U.S. at 523 n.7 (“prior to 1907 there was no provision permitting bail for any aliens during
13 the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952)
14 (“Detention is necessarily a part of [the] deportation procedure.”). Indeed, removal proceedings
15 “‘would be in vain if those accused could not be held in custody pending the inquiry into their true
16 character.’” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235
17 (1896)).

18 Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory
19 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means
20 of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or
21 significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283.

22 Petitioner’s detention here under Section 1225(b) without a pre-detention hearing was
23 lawful. The fact that ICE made an initial determination that Petitioner could be released on parole
24 does not prevent ICE from later revoking that parole. ICE has the clear discretionary authority to

1 revoke conditional parole. 8 C.F.R. § 236.1(c)(9). ICE made an individual discretionary
2 determination to revoke Petitioner's parole during his removal proceedings and while his asylum
3 claim is being processed in the immigration courts. Thus, ICE had a legitimate, non-punitive
4 interest in Petitioner's detention.

5 2. *Procedural Due Process.*

6 “Due process is flexible and calls for such procedural protections as the particular situation
7 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
8 Petitioner's detention is consistent with her due process rights. Under *Mathews*, “[t]he fundamental
9 requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful
10 manner.” *Id.* at 333 (internal quotation marks omitted). This calls for an analysis of (1) “the private
11 interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation of
12 such interest through the procedures used, and probable value, if any, of additional or substitute
13 procedural safeguards,” and (3) the Government's interest. *Id.* at 334-35.

14 a. *Liberty Interest.*

15 The Federal Respondents recognize the “weighty liberty interests implicated by the
16 Government's detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
17 *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not
18 mean that he possesses a separate or heightened liberty interest in the continuation of his
19 conditional release. Moreover, Petitioner does not have a liberty interest in participating in parole.

20 “The recognized liberty interests of U.S. citizens and aliens are not coextensive: the
21 Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules
22 as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th
23 1189, 1206 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 522). As the Supreme Court has
24 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress

1 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S.
2 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during
3 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
4 538 U.S. at 523.

5 Petitioner’s release was always subject to conditions of release, and he knew that he could
6 be re-detained. Accordingly, Petitioner cannot claim that the government promised him ongoing
7 freedom.

8 *b. The existing procedures are constitutionally sufficient.*

9 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
10 of Petitioner’s liberty here is minimal. First, noncitizens have no right to a hearing before an
11 Immigration Judge under Section 1225(b). Likewise, there is no requirement for such a hearing
12 before re-detention after revocation of release. The Supreme Court has warned courts against
13 reading additional procedural requirements into the INA. *See Johnson*, 596 U.S. at 582 (declining
14 to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts
15 . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen
16 to grant them”) (quoting *Vt. Yankee Nuclear Power Corp.*, 435 U.S. at 524 (cleaned up)).

17 *c. The Government has a strong interest in returning noncitizens to*
18 *custody who violate conditions of release.*

19 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
20 test “must account for the heightened government interest in the immigration detention context.”
21 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
22 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
23 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
24 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to

1 determining whether removable aliens must be released on bond during the pendency of removal
2 proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in
3 enforcing compliance with its orders of release on recognizance and returning individuals to
4 custody who violate their terms.

5 In short, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
6 procedural due process.

7 **D. Petitioner has failed to exhaust his administrative remedies and has not sought**
8 **a bond redetermination hearing before an Immigration Judge.**

9 This Court should deny Petitioner’s request for a bond redetermination hearing. Because
10 his removal proceedings are ongoing, Petitioner is lawfully detained pursuant to 8 U.S.C.
11 § 1226(a). The Ninth Circuit has found that Section 1226(a) and its implementing regulations
12 satisfy due process. *Rodriguez Diaz*, 53 F.4th at 1209-10. Throughout his removal proceedings,
13 Petitioner has had the right to seek the very relief he seeks here, a bond redetermination hearing
14 before an Immigration Judge, which could lead to his release.

15 Congress enacted a multi-layered statute that provides for the continued civil detention of
16 noncitizens pending removal. *See Prieto-Romero*, 534 F.3d at 1059. Where an individual falls
17 within this scheme affects whether his detention is discretionary or mandatory, as well as the kind
18 of review process available. *Id.* at 1057. This case concerns the Government’s responsibilities
19 under 8 U.S.C. § 1226(a), which “authorizes the Attorney General to arrest and detain an alien
20 ‘pending a decision on whether the alien is to be removed from the United States.’” *Jennings*,
21 583 U.S. at 306 (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that “there is
22 little question that the civil detention of aliens during removal proceedings can serve a legitimate
23 government purpose, which is ‘preventing deportable . . . aliens from fleeing prior to or during
24 their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be

1 successfully removed.” *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore*, 538 U.S. at 528).

2 Section 1226(a) provides, in part, as follows:

3 On a Warrant issued by the Attorney General, an alien may be arrested and detained
4 pending a decision on whether the alien is to be removed from the United States.
5 Except as provided in subsection (c) of this section and pending such decision, the
6 Attorney General –

7 (1) may continue to detain the arrested alien; and

8 (2) may release the alien on –

9 (A) bond of at least \$1,500 with security approved by, and
10 containing conditions prescribed by, the Attorney General; or

11 (B) conditional parole . . .

12 8 U.S.C. § 1226(a).

13 “Section 1226(a) and its implementing regulations provide extensive procedural
14 protections that are unavailable under other detention provisions.” *Rodriguez Diaz*, 53 F.4th at
15 1202. Every noncitizen apprehended under Section 1226(a) is individually considered for release
16 on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether the
17 noncitizen has “demonstrate[d]” that “release would not pose a danger to property or persons, and
18 that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

19 Here, ICE made an initial custody determination when Petitioner was re-detained on
20 January 2, 2026, that Petitioner shall remain detained pending his asylum claim. Johnson Decl.
21 Ex. B.

22 If the ICE officer denies bond, the noncitizen may ask an Immigration Judge for a
23 redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing held
24 before an Immigration Judge for a noncitizen detained under Section 1226(a) is also called a
“redetermination hearing.” At this hearing, the noncitizen bears the burden of establishing “that he
or she does not present a danger to persons or property, is not a threat to the national security, and
does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Bond hearings

1 are separate and apart from, and form no part of, a noncitizen's removal hearings. 8 C.F.R.
2 § 1003.19(d).

3 Here, Petitioner did not request a bond redetermination hearing on January 2, 2026.
4 Johnson Decl. Ex. B. And has not requested one since then. Reed Decl. at ¶ 11.

5 The noncitizen may appeal the Immigration Judge's custody redetermination to the BIA.
6 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
7 2011). Further, a noncitizen who remains detained pursuant to Section 1226(a) after the initial
8 bond hearing may request that the Immigration Judge conduct another custody redetermination
9 whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R.
10 § 1003.19(e).

11 Here, this Court should require Petitioner to avail himself of the substantial procedural
12 protections of Section 1226(a) before seeking habeas relief in a federal district court. Petitioner
13 has failed to request a bond redetermination hearing from an Immigration Judge pursuant to
14 8 C.F.R. § 236.1(d)(1). Petitioner should be required to seek a hearing before an Immigration
15 Judge, and if necessary, await the BIA's decision on any appeal before asking this Court to
16 intervene and order a bond redetermination hearing.

17 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for
18 habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust
19 available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*,
20 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v.*
21 *Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not
22 a "jurisdictional' prerequisite." *Id.*

23 Courts may require prudential exhaustion where: "(1) agency expertise makes agency
24 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of

1 the requirement would encourage the deliberate bypass of the administrative scheme; and
2 (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude
3 the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

4 The Court should not allow Petitioner to move forward with his request for a bond hearing
5 without first exhausting his administrative remedies before the immigration court and the BIA. A
6 court in this District dismissed a similar habeas petition because the petitioner had failed to seek a
7 bond redetermination hearing at the administrative level. *Cristobal v. Asher*, 20-cv-1493-RSM-
8 BAT, 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *report & recommendation adopted*,
9 2021 WL 796597 (W.D. Wash. Mar. 2, 2021). In *Cristobal*, the petitioner had been detained for
10 15 months and was denied bond at an initial bond redetermination hearing, but he never sought a
11 second bond redetermination hearing based on changed circumstances before filing a habeas
12 petition. The same is true here. Therefore, this Court should also dismiss this habeas petition.

13 Furthermore, this case meets the elements requiring prudential exhaustion because the
14 bond redetermination hearing may provide petitioner with the relief he seeks here and if not, and
15 he is dissatisfied with the bond decision, he can appeal to the BIA. The BIA “has a special expertise
16 in reviewing the question of whether the bond record as a whole makes it substantially unlikely
17 that the Department w[ill] prevail on [the petitioner’s] challenge to removability.” *Francisco*
18 *Cortez v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019)
19 (internal quotation marks omitted). Also, allowing a “relaxation of the exhaustion requirement”
20 would promote the avoidance of seeking a bond redetermination by the Immigration Judge or an
21 appeal of similar Immigration Judge orders to the BIA. Finally, as noted above, the outcome of
22 Petitioner’s bond redetermination hearing and/or BIA appeal may provide him with the relief
23 sought here.

24 Accordingly, Petitioner’s request for a bond redetermination hearing should be denied

1 because Petitioner has failed to exhaust his administrative remedies.

2 **E. Petitioner is not entitled to immediate release.**

3 This Court should deny Petitioner's request for immediate release from immigration
4 detention. A noncitizen is entitled to release if he can show that his immigration detention is
5 indefinite as defined in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *Hong v. Mayorkas*, No. 2:20-
6 cv-1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation*
7 *adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). While Petitioner's detention continues
8 while his removal proceedings are ongoing, he cannot allege that his detention has become
9 indefinite. Petitioner has presented no evidence that ICE will be unable to remove him to
10 Venezuela if his removal order ultimately becomes final. Nor has Petitioner provided any legal
11 basis for his immediate release from detention while detained pursuant to 8 U.S.C. § 1226(a).

12 Accordingly, this Court should deny Petitioner's request for immediate release.

13 **CONCLUSION**

14 Accordingly, Petitioner's habeas petition should be denied and dismissed without an
15 evidentiary hearing.

16 DATED this 12th day of February, 2026.

17 Respectfully submitted,

18 s/ Kristin B. Johnson

19 KRISTIN B. JOHNSON, WSBA #28189

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24 *I certify that this memorandum contains 4,290 words,
in compliance with the Local Civil Rules.*