

The Honorable James L. Robart

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

JELBER ROLANDO BOTELLO  
HERNANDEZ,

Petitioner,

v.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT FIELD OFFICE  
DIRECTOR,

Respondent.

Case No. 2:26-cv-00666-JLR

FEDERAL RESPONDENT'S  
RETURN MEMORANDUM

Noted for Consideration:  
March 30, 2026

**I. INTRODUCTION**

Petitioner, a native and citizen of Guatemala with multiple convictions for serious crimes including rape by force and lewd acts upon a child, challenges his current detention at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. Petitioner seeks either immediate release on supervised release or an additional bond hearing pending the finality of his immigration proceedings. As explained below, Petitioner is lawfully detained under 8 U.S.C. § 1231(a) following the issuance of a final order of removal by the Ninth Circuit on January 22, 2026, with the mandate received on March 23, 2026. Removal to Guatemala is actively being arranged and is reasonably foreseeable. Furthermore, Petitioner has received substantial

1 procedural protections. Petitioner has already received a bond hearing pursuant to his status as a  
2 *Franco*<sup>1</sup> class member, where the government was required to justify his continued detention, and  
3 at which an Immigration Judge denied bond on grounds of danger to the community and flight  
4 risk. No further relief is warranted. The Petition should be denied and dismissed.

## 5 II. FACTUAL AND PROCEDURAL HISTORY

### 6 A. Petitioner Gonzalo Alejo Amezcua

7 Petitioner is a native and citizen of Guatemala who unlawfully entered the United States at  
8 an unknown location in Texas at an unknown time in 2005. Declaration of Deportation Officer  
9 Paul Correa (Correa Decl.) ¶ 3; Declaration of Lawrence Van Daley (Van Daley Decl.) Exhibit  
10 (Ex.) 1, Notice to Appear. He first came to the attention of Immigration and Customs Enforcement  
11 (“ICE”) in or about 2012 while incarcerated in the Sacramento County Jail, California, for being  
12 drunk in public in violation of California Penal Code § 647(f). Correa Decl., ¶ 4. At that time,  
13 Petitioner reported having no criminal convictions. *Id.* ICE released him under prosecutorial  
14 discretion and served him with a Notice to Appear charging removability under INA §  
15 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

16 While released, Petitioner continued to engage in criminal conduct. On August 4, 2014, he  
17 was booked into Sacramento County Jail for driving under the influence and sentenced to two days  
18 in jail. Correa Decl., ¶ 5. On October 17, 2015, he was again arrested for driving under the  
19 influence and sentenced to twenty days in jail. Correa Decl., ¶ 6. Shortly thereafter, on  
20 November 17, 2015, ICE detained Petitioner and issued a superseding Notice to Appear again  
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22 <sup>1</sup> *Franco-Gonzalez v. Holder*, CV 10-02211 DMG DTBX, 2013 WL 8115423 (C.D. Cal. Apr. 23, 2013) (permanent  
23 injunction). This class action, brought on behalf of immigration detainees with severe mental disabilities in Arizona,  
24 California, and Washington, resulted in a permanent injunction requiring the government to appoint qualified  
representatives for class members incompetent to represent themselves in removal proceedings and to provide timely  
bond redetermination hearings (generally within 15 days) for class members detained more than 180 days.

1 charging removability under INA § 212(a)(6)(A)(i). Correa Decl., ¶ 7; Van Daley Decl., Ex. 1. On  
2 December 7, 2015, an Immigration Judge in San Francisco ordered his release from custody on a  
3 \$2,500 bond and required him to attend Alcoholics Anonymous meetings at least twice per week.  
4 Correa Decl., ¶ 8; Van Daley Decl., Ex. 2, Bond Order. Petitioner was released on or about  
5 December 11, 2015. *Id.*

6 In October 2016, Petitioner filed Form I-918 (U-visa petition) and Form I-192 (waiver of  
7 inadmissibility) with U.S. Citizenship and Immigration Services. Correa Decl., ¶ 9. Both  
8 applications were denied on April 29, 2022. *Id.* Petitioner twice moved to administratively close  
9 his removal proceedings to pursue the U-visa; the Immigration Judge granted administrative  
10 closure on December 13, 2017. Correa Decl., ¶ 10; Van Daley Decl., Ex. 3, Admin. Closure.

11 On September 26, 2019, while his immigration proceedings remained administratively  
12 closed, Petitioner was convicted in California of rape by force or fear in violation of California  
13 Penal Code § 261(a)(2) and lewd or lascivious acts upon a child under fourteen in violation of  
14 California Penal Code § 288(a). Correa Decl., ¶ 12; Van Daley Decl., Ex. 4, Form I-213. Petitioner  
15 was sentenced to eight years in state prison at San Quentin and was ineligible for parole. *Id.* On  
16 May 16, 2019, the Department of Homeland Security (DHS) filed a motion to re-calendar in the  
17 San Francisco Immigration Court, which was subsequently granted. Correa Decl., ¶ 11. On  
18 November 20, 2019, Petitioner moved to administratively close his removal proceedings in light  
19 of the conviction; the Immigration Judge granted the motion on November 28, 2022. Correa Decl.,  
20 ¶ 12.

21 On July 30, 2024, Petitioner was released from prison and immediately transferred to ICE  
22 custody at the San Francisco Enforcement and Removal Operations office. Correa Decl., ¶ 12; Van  
23 Daley Decl., Ex. 5, Custody Determination. That same day, DHS filed a motion to re-calendar  
24 removal proceedings, which the Immigration Judge granted on August 19, 2024. Correa Decl.,

¶ 14. Petitioner was transferred to the Northwest ICE Processing Center on July 31, 2024. Correa Decl., ¶ 15. On November 6, 2024, the Tacoma Immigration Judge determined that Petitioner was mentally incompetent to represent himself and ordered the assignment of a qualified representative. Correa Decl., ¶ 16; Van Daley Decl., Ex. 6, Competency Order. On November 14, 2024, Petitioner filed Form I-589 (application for asylum and related relief) with the Tacoma Immigration Court. Correa Decl., ¶ 17.

On January 10, 2025, DHS requested a bond redetermination hearing pursuant to Petitioner's status as a *Franco* class member. Correa Decl., ¶ 18. On January 30, 2025, the Immigration Judge denied bond, finding Petitioner both a danger to the community and a flight risk. Correa Decl., ¶ 19. Petitioner waived appeal of that decision. *Id.* On May 7, 2025, the Immigration Judge denied all forms of relief and ordered Petitioner removed to Guatemala. Correa Decl., ¶ 20; Van Daley Decl., Ex. 7, Removal Order. Petitioner appealed the decision and The Board of Immigration Appeals (BIA) dismissed Petitioner's appeal on October 1, 2025. Correa Decl., ¶¶ 21-22. Petitioner then filed a petition for review with the Ninth Circuit on October 27, 2025, along with a request for a stay. Correa Decl., ¶ 23. On January 22, 2026, the Ninth Circuit denied the petition for review and lifted the stay. *Id.*

Upon receipt of the mandate on March 23, 2026, DHS promptly contacted Petitioner's qualified representative to coordinate removal arrangements. Correa Decl., ¶ 24. The representative advised contacting Petitioner's sister in Guatemala or the Guatemalan embassy for assistance with Petitioner's arrival in Guatemala City. *Id.* Petitioner remains detained at the Northwest ICE Processing Center pending final removal arrangements. Correa Decl., ¶ 25.

## **B. Detention Authority**

Petitioner is currently detained at the Northwest ICE Processing Center (NWIPC) pursuant to the post-removal-order detention authority set forth in 8 U.S.C. § 1231(a). Under this statute,

1 once a final order of removal becomes administratively final, the government must remove the  
2 alien “within a period of 90 days (in this section referred to as the ‘removal period’).” 8 U.S.C. §  
3 1231(a)(1)(A). During the removal period, detention is mandatory for certain categories of aliens,  
4 including those convicted of aggravated felonies. 8 U.S.C. § 1231(a)(2). After expiration of the  
5 removal period, the Attorney General “may” continue to detain an alien who is inadmissible or  
6 removable on specified grounds or “who has been determined by the Attorney General to be a risk  
7 to the community or unlikely to comply with the order of removal.” 8 U.S.C. § 1231(a)(6).

8 The Supreme Court has construed 8 U.S.C. § 1231(a) to prohibit indefinite detention. In  
9 *Zadvydas v. Davis*, 533 U.S. 678, 689, 699 (2001), the Court held that the statute authorizes  
10 detention only for a period “reasonably necessary” to effectuate removal. The Court established a  
11 presumptively reasonable period of six months of post-removal detention; after that period, an  
12 alien may obtain habeas relief by showing that removal is not “significantly likely” in the  
13 reasonably foreseeable future, at which point the government must rebut the showing or release  
14 the alien. *Id.* at 701. The Ninth Circuit has repeatedly applied this framework to 8 U.S.C. §  
15 1231(a)(6) detainees. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197–98 (9th Cir. 2022)  
16 (once a final removal order issues and is not subject to a judicial stay, detention authority shifts to  
17 8 U.S.C. § 1231(a)).

### 18 III. LEGAL AUTHORITY

19 This Court has jurisdiction to entertain the Petition under the federal habeas statute, 28  
20 U.S.C. § 2241(a) and (c)(3), which authorizes review of claims that an alien is “in custody in  
21 violation of the Constitution or laws or treaties of the United States.” *See Zadvydas v. Davis*, 533  
22 U.S. 678, 687 (2001). However, the Petition fails on the merits. Petitioners’ detention is lawful,  
23 and his claim of constitutional violations are without merit.

**IV. ARGUMENTS**

**A. Petitioner Is Lawfully Detained Under 8 U.S.C. § 1231(a)**

Petitioner has filed this habeas litigation prematurely. Petitioner's order of removal became final on January 22, 2026, when the Ninth Circuit denied his petition for review and lifted the stay of removal. The mandate formally concluding the Court's appellate review was issued on March 23, 2026. As of the filing of this Response, Petitioner has been in post-removal-order detention for only two days and is therefore detained pursuant to the post-removal-order detention authority set forth in 8 U.S.C. § 1231(a).

Under this statutory framework, once a final order of removal becomes administratively final, "the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). During that mandatory ninety-day removal period, detention is required for certain categories of aliens, including those convicted of aggravated felonies. 8 U.S.C. § 1231(a)(2). Petitioner falls within this category. His convictions for rape by force or fear in violation of California Penal Code § 261(a)(2) and lewd or lascivious acts upon a child under fourteen in violation of California Penal Code § 288(a) both qualify as aggravated felonies under 8 U.S.C. § 1101(a)(43)(F) and (A). These convictions trigger mandatory detention during the removal period.

Even after the ninety-day removal period expires, the Attorney General retains authority to continue detention for an alien who "has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6). Here, Petitioner's aggravated-felony convictions, combined with the Immigration Judge's unchallenged January 30, 2025 finding that he is both a danger to the community and a flight risk, fully authorize his ongoing detention under this provision.

1 The Supreme Court has made clear that, once a final removal order issues and is no longer  
2 subject to a judicial stay, detention authority shifts squarely to 8 U.S.C. § 1231(a) and the statute  
3 contains no implied limitation requiring periodic bond hearings. *Jennings v. Rodriguez*, 583 U.S.  
4 281, 321 (2018) (rejecting implied bond-hearing requirements under the immigration detention  
5 statutes); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197–98 (9th Cir. 2022) (once a final  
6 removal order issues and is not subject to a judicial stay, detention authority shifts to 8 U.S.C. §  
7 1231(a)). The Court has also upheld the constitutionality of mandatory detention of criminal aliens  
8 during removal proceedings. *Demore v. Kim*, 538 U.S. 510, 531 (2003). Petitioner’s requests for  
9 immediate supervised release or yet another bond hearing therefore lack any statutory or  
10 constitutional foundation.

11 In addition, Petitioner’s continued detention fully complies with the due process limitations  
12 recognized in *Zadvydas*, 533 U.S. 678. There, the Supreme Court construed 8 U.S.C. § 1231(a)(6)  
13 to authorize detention only for a period “reasonably necessary” to accomplish removal. *Id.* at 689,  
14 699. To avoid a serious constitutional question, the Court read an implicit limitation into the  
15 statute, holding that detention is presumptively reasonable for six months after the removal order  
16 becomes final. *Id.* at 701. Only after that presumptive six-month period may an alien obtain habeas  
17 relief by demonstrating that there is “no significant likelihood of removal in the reasonably  
18 foreseeable future,” at which point the government must either rebut that showing or release the  
19 alien subject to appropriate conditions. *Id.* at 699–701.

20 In this case, the six-month presumptive period has just begun. Petitioner has been in post-  
21 removal-order custody for only two days. Detention is therefore presumptively reasonable under  
22 *Zadvydas*. See also *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (reaffirming that the  
23 *Zadvydas* framework applies only after the presumptive six-month period). Even if the Court were  
24 to look beyond the presumption, removal to Guatemala remains reasonably foreseeable. Upon

1 receipt of the Ninth Circuit mandate on March 23, 2026, DHS immediately contacted Petitioner's  
2 qualified representative to coordinate removal arrangements. The representative specifically  
3 directed DHS to contact Petitioner's sister in Guatemala or the Guatemalan Embassy for assistance  
4 with Petitioner's arrival in Guatemala City. Active, concrete steps are being taken to effect  
5 removal, and Guatemala has not refused acceptance.

6 Finally, Petitioner's serious criminal history of convictions for rape by force and lewd acts  
7 on a child establishes him as a danger to the community. *Zadvydas* expressly permits continued  
8 detention when the alien poses a risk to the public and removal is reasonably foreseeable.  
9 *Zadvydas*, 533 U.S. at 691, 701. The Immigration Judge reached the identical conclusion at  
10 Petitioner's January 30, 2025, bond hearing, finding him both a danger and a flight risk. That  
11 finding remains unchallenged and unreversed. For all these reasons, Petitioner's detention is both  
12 statutorily authorized and constitutionally permissible.

13 **B. Petitioner's Received All Process Due Under the Franco-Gonzalez Framework, the**  
14 **Immigration and Nationality Act, and the Due Process Clause**

15 Even if Petitioner were not subject to mandatory detention under Section 1231(a),  
16 Petitioner's detention comports with due process. As a mentally incompetent detainee, Petitioner  
17 is a member of the *Franco-Gonzalez* class and was afforded every protection required by that  
18 permanent injunction. *See Franco-Gonzalez v. Holder*, No. CV 10-02246 DMG (permanent  
19 injunction). The *Franco-Gonzalez* injunction applies to immigration detainees in Arizona,  
20 California, and Washington who suffer from severe mental disabilities and are unable to  
21 adequately represent themselves. *Id.* The injunction has two core requirements relevant here: (1)  
22 the government must appoint a "qualified representative" (an attorney or accredited representative)  
23 to assist the detainee in immigration proceedings, and (2) the government must provide timely  
24 bond redetermination hearings for class members who have been detained more than 180 days

1 (with the hearing scheduled as soon as practicable and no later than 15 days after the 189-day  
2 mark). *Id.*; *see also Franco-Gonzalez v. Holder*, 767 F. Supp. 2d 1034, 1048–49 (C.D. Cal. 2010)  
3 (preliminary injunction establishing these safeguards).

4 Petitioner received both forms of relief. On November 6, 2024, the Tacoma Immigration  
5 Judge determined that Petitioner was mentally incompetent to represent himself and ordered the  
6 assignment of a qualified representative. That representative has actively participated in  
7 Petitioner’s proceedings, including filing the Form I-589 on November 14, 2024, and coordinating  
8 removal logistics after the Ninth Circuit mandate. On January 10, 2025, within the 15-day window  
9 triggered by Petitioner’s status as a *Franco* class member detained more than 189 days, DHS  
10 requested a bond redetermination hearing. On January 30, 2025, the Immigration Judge conducted  
11 the hearing and denied bond after considering Petitioner’s danger to the community and flight risk.  
12 Petitioner waived appeal for that decision.

13 These steps fully satisfy the *Franco-Gonzalez* injunction. Once a final order of removal  
14 issues and removal is reasonably foreseeable, no additional bond hearing is constitutionally or  
15 statutorily required. *Jennings*, 583 U.S. 281, 321 (2018); *Zadvydas*, 533 U.S. 678, 690–91 (2001)  
16 (due process satisfied by periodic administrative custody reviews under 8 C.F.R. §§ 241.4 and  
17 241.13). Petitioner’s demand for yet another bond hearing or immediate supervised release  
18 therefore fails as a matter of law.

## 19 V. CONCLUSION

20 For the foregoing reasons, Respondents respectfully request that the Court deny the Petition  
21 for Writ of Habeas Corpus in its entirety.

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1 DATED this 25th day of March, 2026.

2 Respectfully submitted,

3 s/ Lawrence Van Daley

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14 I certify that this memorandum contains 2,597  
15 words, in compliance with the Local Civil Rules.