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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

O-R-C-A, ***an adult,***

Petitioner,

v.

CAMMILLA WAMSLEY; TODD LYONS; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KIRSTI NOEM; U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI

Respondents.

Case No.: 6:25-cv-02055-MC

RESPONDENTS' OPPOSITION TO THE PETITION

Pursuant to the Court's November 5, 2025 order (Dkt. 4), Respondents submit this response in opposition to the Petition (Dkt. 1, "Pet.").

To obtain habeas relief, Petitioner must prove that his custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. Petitioner claims that Immigration and Customs Enforcement (ICE) revoked his release from custody and re-detained him without any consideration of his individualized circumstances, in violation of the Administrative Procedure Act ("APA") and the Fifth Amendment of the United States Constitution.

Petitioner's argument ignores the facts of his case. Based on Petitioner's violations of his conditions of release, ICE re-detained him as a flight risk. ICE's decision to take Petitioner back into custody conforms with its broad statutory and regulatory authority to re-detain noncitizens in removal proceedings. The Court should deny the Petition.

I. FACTUAL BACKGROUND

Petitioner is a native and citizen of Ecuador who entered the United States on May 21, 2024 near El Paso, Texas, without being inspected or admitted by an immigration officer. *See* Declaration of Madison Piersoll ("Piersoll Decl."), attached as Exhibit 1, at ¶ 3. Petitioner told the Border Patrol that he had a cousin who lived in Sandy, Utah. *Id.*

On May 22, 2024, the Border Patrol personally served Petitioner with a Notice to Appear, charging him with inadmissibility under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. Piersoll Decl. at ¶ 4. Under the statute, an "alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." The

Notice to Appear directed him to report to immigration court in Salt Lake City, Utah on August 12, 2026. *Id.*

Later in the day on May 22, 2024, Petitioner was released by the Border Patrol on his own recognizance and directed to report to ICE's Office of Enforcement and Removal Operations (ERO) for alternatives to detention. *Id.* He signed an Order of Release on Recognizance (OREC) acknowledging the conditions of his release. *Id.* at ¶ 5.

On July 17, 2024, Petitioner reported to the ERO office in Provo, Utah, where he was enrolled in the alternatives to detention (ATD) program. *Id.* at ¶ 7. The ATD release program prohibited Petitioner from leaving his state of residence, which at the time was Utah, without prior, written permission. *Id.* The release program for Petitioner used an application on his mobile phone to track his location. *Id.*

He eventually signed the agreement for mobile phone location monitoring, also known as SmartLINK, on September 13, 2024. *Id.* at ¶ 8. The SmartLINK agreement is attached as Exhibit 2. Paragraph 12 of the SmartLINK agreement provides, "I agree to stay within the area designated by the ERO, and agree to seek permission to leave this area." Ex. 2, at 1 (English) and 3 (Spanish).

Within weeks, Petitioner began violating the rules of the release program. He missed a check-in appointment on October 1, 2024. *Id.* at ¶ 9. He missed a second check-in appointment on November 1, 2024. *Id.* at ¶ 10.

Then Petitioner began traveling outside his state of residence without permission. On February 1, 2025 he was reported to be outside the state. *Id.* at ¶ 12. The same thing happened on March 1, 2025. *Id.* at ¶ 13.

On April 10, 2025, Petitioner visited the ICE ERO office in Medford, Oregon, where he reported that he had relocated to Medford. *Id.* at ¶ 14.

But he continued to violate the rules of the release program. He missed biometric check-ins on July 25 and August 15, 2025. *Id.* at ¶¶ 15-16. He traveled outside Oregon without permission on August 20, 2025, which he later explained by saying the trip was for work and he forgot to seek permission because he left on a weekend. *Id.* at ¶ 17. He was in Colorado for several days. *Id.*

By September 19, 2025, his violations of the release program escalated. He traveled to Mississippi without permission and did not return phone calls from ICE. *Id.* at ¶ 18. He was apparently living and working in Mississippi without permission until October 15, 2025. *Id.*

His unapproved travel continued throughout October 2025. He showed up in Florida on October 17, 2025, when he also missed another biometric check-in. *Id.* at ¶ 18. He showed up in Kentucky on October 21, 2025. *Id.* at

¶ 20. Then he appeared in Nebraska on October 22 and 23, 2025. *Id.* at ¶ 21. He showed up in Nevada on October 24, 2025. *Id.* at ¶ 22. Then he missed a biometric check-in on November 3, 2025. *Id.* at ¶ 23.

On November 4, 2025, Petitioner reported to the ICE ERO office in Eugene, Oregon. *Id.* at ¶ 24. His release on recognizance was canceled for failing to comply with the conditions of the release program. *Id.* He told officers that day that he wanted to terminate his removal proceedings and voluntarily return to Ecuador to be with his wife and child. *Id.* He was taken to the Northwest ICE Processing Center in Tacoma, Washington, where he remains. *Id.* at ¶ 25.

His immigration case has been transferred from Salt Lake City to Tacoma, Washington. *Id.* at ¶ 26. No hearings have been held in any immigration court for Petitioner. *Id.* at ¶ 20.

Petitioner's motion correctly states that he has filed an asylum claim. However, Petitioner mistakenly asserts that he has been place in expedited removal proceedings. ICE counsel informed the undersigned Assistant United States Attorney today that Petitioner is *not* in expedited removal proceedings.

II. LEGAL BACKGROUND

A. The Constitution and Federal Statutes Confer Broad Powers on the Executive Branch to Administer the Immigration System

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The primary immigration statute, the Immigration and Nationality Act ("INA"), provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. Among those powers, the President, through the Department of State and DHS, decides which noncitizens may enter and remain in the country. *See* 8 U.S.C. §§ 1103, 1104.

Under the INA, if an applicant for admission seeks admission to the United States without a valid entry document, DHS may charge the alien as inadmissible and initiate removal proceedings against the noncitizen. 8 U.S.C. § 1229a(a)(2). Removal proceedings begin when an immigration officer files the notice to appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court).

B. Noncitizens are Subject to Detention During Removal Proceedings

Under 8 U.S.C. § 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). ICE though has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

Under 8 U.S.C. § 1226(a), ICE may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

ICE "at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b); *see also* 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9) ("When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director [and certain other federal officers] in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled."). When ICE takes a noncitizen back into custody, the noncitizen can request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1).

III. ARGUMENT

A. ICE Re-detained Petitioner Based on his Specific Circumstances

Petitioner claims ICE did not consider his individualized circumstances when it decided to re-detain him, in violation of the APA. (Pet. ¶¶ 4, 64-67, 77-78.) Assuming *arguendo* ICE was required to consider Petitioner's individualized circumstances,[1] ICE did so.

Petitioner repeatedly violated the conditions of his release by failing to appear for check-ins, traveling outside his state of residence without prior permission, not returning phone calls from ICE, being outside Oregon without permission for *many weeks* before his arrest, and traveling without permission to Colorado, Florida, Kentucky, Nebraska and Nevada in the three months before his arrest. Those multiple failures to abide by the rules of the release program made him a flight risk. He was literally all over the country without permission.

Based on his individualized circumstances, ICE revoked Petitioner's OREC and took him into custody. Accordingly, ICE made "a rational connection between the facts found and the choice made" consistent with the requirements of the APA.

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[1] Petitioner's argument that ICE must consider his individualized circumstances ignores that the statute and regulation authorizing DHS to re-detain noncitizens is broad and contains no such requirement. *See, e.g., Salvador F.-G. v. Noem*, No. 25-cv-0243, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025) (finding nothing in the statute or regulation authorizing the revocation of bond or parole to require a change in a noncitizen's circumstances before being re-detained).

Dep't of Comm. v. New York, 588 U.S. 752, 773 (2019) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

The four counts in Petitioner's motion fail because they are all based on the mistaken assumptions that there were "no changes to Petitioner's facts or circumstances to support detention" (Pet. at ¶ 65, *see also* ¶ 78 – Counts 2, 4), or that Petitioner is now in expedited removal proceedings (Pet. at ¶¶ 59, 72 – Counts 1, 3).

Ironically, Petitioner's motion suffers from the same error that he accuses ICE of committing when arresting him: failing to account for the actual facts of Petitioner's situation. ICE did account for those facts, and its decision to re-detain him was entirely justified by his trail of failures while in the release program.

CONCLUSION

The Court should deny the Petition and direct Petitioner to pursue his available remedies, including litigating his asylum claim, in the immigration court proceedings in Tacoma.

Respectfully submitted this 12th day of November 2025.

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