

HON. DISTRICT JUDGE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIN ARIEL GARCIA GABRIEL,	)	No. 2:25-cv-02594-DGE
Petitioner,	)	
v.	)	PETITIONER'S RESPONSE TO
LAURA HERMOSILLO, <i>et.al.</i> ,	)	FEDERAL RESPONDENTS' RETURN
Respondents.	)	

INTRODUCTION

For eight years, Petitioner Marin Garcia Gabriel complied with all conditions of his release under an order of release on recognizance. Ex C. On November 5, 2025, without revoking the order or without providing him with a hearing to determine whether conditions of his release were breached, Respondents arrested and detained Petitioner in Eugene, Oregon. Dkt. 1, p 1. He has been detained in Tacoma, 250 miles away from his home for more than two months. Ex A. Because his detention is unlawful, he should be released from custody.

RESPONDENTS' RETURN

28 U.S.C. §2243 requires the government to "make a return certifying the true cause of the detention." Respondents' return certifies "the true cause" for Petitioner's detention is 8 U.S.C. §1225(b). Dkt. 8, p 1. Meanwhile, they acknowledge this Court has held §1225(b) does not apply to noncitizens like Petitioner who are present in the United States. *Id.* at 3. In fact,

1 many courts across the country have reached the same conclusion. *J.Y.L.C. v. Bostock*, 3:25-
 2 cv-02083-AB (D. OR. Nov. 12, 2025), Dkt. 15, p 5-6 (collecting more than 30 federal court
 3 cases holding detention under § 1225(b) of a person already present in the United States is
 4 unlawful). Accordingly, Respondents fail to provide a lawful basis for Petitioner's continued
 5 detention. 28 U.S.C. §2243.

6 Additionally, Respondents do not deny when they arrested and detained Petitioner, they
 7 violated his rights under the constitution, APA, INA, and regulations as alleged in the Petition
 8 for Writ of Habeas Corpus, nor do they dispute the fact that they did not provide him with a
 9 pre-deprivation hearing prior to his detention. Dkt. 1, p 17-24 & Dkt. 8. Therefore, the Petition,
 10 which remains largely unchallenged and undisputed, should be granted.

12 ARGUMENT

13 I. Petitioner's Ongoing Detention Violates Due Process.

14 "Freedom from imprisonment—from government custody, detention, or other forms of
 15 physical restraint — lies at the heart of the liberty protected by the Due Process Clause"
 16 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, this is "the
 17 most elemental of liberty interests." *E.A. T.-B v. Wamsley*, 2025 WL 2402130, at *3 (W.D.
 18 Wash. Aug. 19, 2025) (citation modified); *see also Ramirez Tesara v. Wamsley*, 2025 WL
 19 2637663, at *3 (stating that the petitioner had "an exceptionally strong interest in freedom from
 20 physical confinement"); *see also Ledesma Gonzalez v. Bostock*, No. 2:25-cv-01404-JNW-GJL,
 21 2025 WL 281574 at *20 (W.D. Wash. Oct. 7, 2025) (finding " that Ledesma Gonzalez has a
 22 protected liberty interest in his continuing release from custody, and that due process required
 23 that he receive a hearing before an immigration judge before he could be re-detained").
 24
 25
 26

1 Respondents did not provide Petitioner with a pre-deprivation hearing before re-
2 detaining him, nor do they deny he has complied with all conditions of his release. Ex A&C. In
3 fact, the order of release has not been revoked. Ex A. Respondents' failure to provide the
4 constitutionally required pre-deprivation hearing violates due process.

5 Furthermore, Respondents' "shoot first, explain later" approach used to detain
6 Petitioner also violates due process. *See O-R-C-A v. Wamsley*, 6:25-cv-02055-MC (D. OR.
7 Dec. 9, 2025), Dkt. 14, p. 4. Petitioner was not the target of ICE's targeted immigration
8 enforcement operations on the morning of November 5, 2025. Dkt. 10-3, p 2. He happened to
9 ride in a vehicle that became a target of ICE enforcement and was arrested for no reason other
10 than his apparent ethnicity. Dkt. 1, p 17. To justify his arrest, Respondents provided internally
11 conflicting evidence. An arrest warrant was purportedly written up in Eugene, Oregon with
12 Petitioner's name and a date apparently inserted in a pre-prepared form. Dkt. 10-2, p 3. A
13 second warrant listing Portland, Oregon as location of arrest was drawn up many hours after
14 Petitioner had already been detained in Eugene, which is more than 100 miles away from
15 Portland. Dkt. 10-2, p 2. Meanwhile, according to Form I-213, Petitioner was arrested without
16 a warrant. Dkt. 10-3, p 3. Here three versions of the same arrest contradict one another.

17
18 In his Petition, Petitioner states he was not shown any warrant at the time of his arrest.
19 Dkt. 1, p 16 & Ex A. Respondents' return neither denies this fact, nor does it tell this Court
20 whether the warrants included in their return filing were even served on Petitioner.
21 Respondents unlawfully arrested Petitioner first and attempted to justify the arrest later by
22 manufacturing arrest warrants and initiating fresh removal proceedings. Dkt. 10-4.
23 Respondents' procedural maneuvers after arrest and detention that were aimed at justifying
24 their unlawful arrest and detention amount to "impermissible post hoc rationalizations" in
25
26

1 violation of due process. See *Dep't of Homeland Sec. v. Regents of the Univ. of California*,
2 591 U.S. 1, 22 (2020).

3 In a similar situation, the District Court for Oregon concluded: “the Respondents’
4 ‘shoot first, explain later’ approach to detention in this case violates both the Administrative
5 Procedure Act (“APA”) and the Due Process Clause of the Fifth Amendment.” See *O-R-C-A v.*
6 *Wamsley* at Dkt. 14, p. 4. In that case, the court enjoined ICE from relying on 8 U.S.C.
7 §1225(b)(2) to detain O-R-C-A and ordered that “O-R-C-A shall not be re-detained without
8 notice and the opportunity to be heard at a pre-deprivation hearing before a neutral
9 decisionmaker, where [ICE has] the burden of establishing, by clear and convincing evidence,
10 that [he] poses a danger to the community or a risk of flight.” *Id.*

11
12 Re-detaining Petitioner without the pre-deprivation hearing violates his right to due
13 process. Respondents’ impermissible post hoc actions do not justify the current detention.

14 **II. 8 U.S.C. § 1225 Does Not Provide Legal Basis for Current Detention.**

15 Respondents contend Petitioner is subject to mandatory detention under 8 U.S.C.
16 1225(b) as an “applicant for admission.” Respondents’ position is a misapplication of the
17 statute inconsistent with the record and the relevant statutory scheme. Applying this provision
18 to Petitioner is a violation of the INA and, therefore, unlawful.

19 **A. Petitioner’s custody is not governed by §1225(b).**

20
21 The statutory scheme governing detention is clear: §1225(b) governs noncitizens who
22 are applicants seeking admission into the United States; §1226(a) applies to noncitizens who
23 are already present in the country in removal proceedings. *Jennings v. Rodriguez*, 583 U.S.
24 281, 289 (2018). Under §1225(b), mandatory detention applies to noncitizens who have just
25 crossed the borders or ports of entry seeking admission. *Id.* at 287. Respondents detained
26

Petitioner in Eugene, Oregon which is neither a border nor a port of entry. Since he entered the United States in May 2016, he could not have been “seeking admission” when he was detained in Eugene, Oregon on November 5, 2025. Detention of Petitioner under §1225(b) is unlawful. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025); *see also* *Picardo Medina v. Hermosilla*, 3:25-cv-02233-MC (D. OR. Dec. 22, 2025), Dkt. 15, p 6.

B. Federal courts have overwhelmingly rejected the government’s misapplication of §1225(b).

Federal courts across the country have repeatedly held that detention of noncitizens like Petitioner who have been physically present in the United States for many years under § 1225(b) is unlawful. *See, e.g., J.Y.L.C. v. Bostock* at, Dkt. 15, p 5-6 (collecting more than 30 cases); *Rodriguez Vasquez v. Bostock*, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Maldonado Bautista v. Santacruz*, 2025 WL 3289861, at *14 (C.D. Cal. Nov. 20, 2025) (granting class wide injunction against this “novel and uniform policy”); *Gomes v. Hyde*, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 at *10 (D. Ariz. Aug. 11, 2025) .

C. Respondents’ own evidence contradicts mandatory detention.

Respondents’ own documentary record goes directly against their argument that mandatory detention under §1225(b) applies to Petitioner. The NTA charges Petitioner as inadmissible and places him in removal proceedings under §1229(a), INA section 240, not expedited removal under §1225(b). Dkt. 10-4, p 2. §1226(a) governs detention for individuals in §1229(a) proceedings. *Jennings* at 289. Petitioner’s release order issued in May 2017 expressly cites its authority as section 236 of the INA, i.e., §1226(a). Ex C. Respondents cannot now, eight years later, retroactively misapply a mandatory detention statute to justify detention that their own chosen procedures render inapplicable.

D. Immigration Judge (“IJ”)’s bond denial constitutes continued due process violation.

When denying Petitioner’s bond under §1225(b), the IJ did not only misapply the statute, but also blatantly ignored the federal court ruling that §1225(b) does not apply to “Bond Eligible Class”, of which Petitioner is a member under *Maldonado Bautista*. Ex B. In the bond hearing, the IJ concluded she had no jurisdiction under § 1225(b). Dkt. 10-5, p 2. However, she still went on to hold Petitioner was a flight risk, despite of overwhelmingly convincing evidence before her in the record indicating Petitioner’s past compliance, family ties and community support. Ex B. The bond denial based on erroneous application of law and failure to consider evidence violated Petitioner’s due process rights. The bond hearing, which itself violated due process, cannot cure Petitioner’s constitutional injury here. Rather the denial has exacerbated such injury. While the immigration court has shut doors to review evidence and make decisions in an impartial manner, this Court should open those doors again for justice to prevail in this case.

Because Respondents do not claim that Petitioner is being detained under §1226(a), this Court does not need to consider §1226(a) as the basis for his current detention, and thus immediate release is appropriate remedy. *See Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025); *see also Mariscal-Duarte v. De Leon*, 5:25-cv-01771-XR (W.D. TX Dec 30, 2025), Dkt 9, p 9.

III. This Court Has Jurisdiction.

Under 28 U.S.C. §2241, this Court has jurisdiction to determine whether Petitioner’s detention is in violation of the Constitution, laws, or treaties of the United States. See 28 U.S.C. §2241(c)(3). However, Respondents argue that this Court has no jurisdiction under 8 U.S.C. §§1252(a)(5) and 1252(b)(9). “By virtue of their explicit language, both §§1252(a)(5)

1 and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal,” *Singh*
 2 *v. Gonzalez*, 499 F.3d 969, 978 (9th Cir. 2007). The Petition does not challenge any order of
 3 removal. In fact, no order of removal has been issued by the IJ in Petitioner’s case. Thus,
 4 §§1252(a)(5) and 1252(b)(9) are not applicable here.

5 Additionally, the Supreme Court has interpreted the jurisdiction-stripping provision
 6 narrowly to only “three discrete actions” including “decision or action to commence
 7 proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-*
 8 *Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner is not challenging removal
 9 proceedings or execution of removal orders. Instead, he is challenging the legality of his
 10 detention and seeking release from custody. This falls squarely within the Court’s habeas
 11 jurisdiction.
 12

13 **IV. Release from Custody is Proper Remedy.**

14 Respondents contend that remedy for unlawful arrest is suppression of evidence,
 15 instead of release from custody. Dkt. 8, p 7. This argument fails for two reasons. First,
 16 unlawful arrest is only one of the several undisputed constitutional violations listed in the
 17 Petition. Dkt. 1, p 17-24. Second, Petitioner is not disputing admission of evidence obtained
 18 from unlawful arrest. The cases cited by Respondents demonstrate that the suppression of
 19 evidence under the exclusionary rule which is a rule of evidence does not have any bearing on
 20 release from custody, a form of relief in habeas proceedings. Dkt. 8, p 7-9.
 21

22 Federal courts have broad discretion to grant relief in habeas cases. *Lujan v. Garcia*,
 23 734 F.3d 917, 933 (9th Cir. 2013). As this Court has held in multiple parallel cases, Petitioner’s
 24 ongoing detention is unlawful, and his immediate release is required. *See E.A.T.-B.*, 2025 WL
 25 2402130 at *6. (ordering immediate release because “a post-deprivation hearing cannot serve
 26

1 as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous
2 deprivation of liberty”); *see also Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL
3 2579569, at *5 (W.D. Wash. Sept. 5, 2025) (ordering immediate release to secure status quo of
4 liberty prior to alleged unlawful re-detention); *see also Ramirez Tesara*, Dkt. 19 (ordering
5 immediate release to restore Petitioner to the status quo prior to his unlawful arrest without a
6 hearing).

8 CONCLUSION

9 For the foregoing reasons, the Court should grant the Petition and release Petitioner.

10
11 DATED this 7th day of January, 2026.

12
13 Respectfully submitted,

14 s/ *Benjamin Wang*

15 Attorney for Petitioner

16
17 I certify this document contains 2099 words in compliance with the Local Civil Rules.
18
19
20
21
22
23
24
25
26