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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

W-J-C-V-,

Case No.: 6:25-cv-02369-MC

Petitioner,

v.

**RESPONDENTS' RETURN TO
PETITION FOR WRIT OF HABEAS
CORPUS**

LAURA HERMOSILLO; et al.

Respondents.

Respondents, through counsel, submit this return to the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. This return is supported by the Declaration of Pontus Lundquist ("Lundquist Decl.").

BACKGROUND

Petitioner is a native and citizen of Venezuela. *Id.* at ¶ 9. On or about June 15, 2022, Petitioner entered the United States without inspection or admission near Eagle Pass Port of Entry. *Id.* at ¶ 4. Petitioner was apprehended by immigration officials on the same day, near the border. *Id.* Petitioner was released from custody via parole due to lack of detention capacity on June 17, 2022, and enrolled in the Alternative to Detention (ATD) program. *Id.* at ¶ 5. On or about July 26, 2022, Petitioner failed to appear for an ATD appointment in San Antonio, Texas. *Id.* at ¶ 6. On August 10, 2022, Petitioner was terminated from the ATD program for absconding. *Id.* at ¶ 7. On or about August 22, 2022, Petitioner was enrolled in the Portland, Oregon, ATD program called Intensive Supervision and Appearance Program (ISAP), which uses a cell phone application called SmartLink. *Id.* at ¶ 8.

On March 16, 2023, DHS served Petitioner with a Notice to Appear (NTA), alleging that Petitioner entered without admission or inspection and without a valid entry document. The NTA charged that Petitioner is removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) (8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I)). *Id.* at ¶ 9.

On September 16, 2023, Petitioner was cited in Washington County, Oregon, for Driving under the Influence of Intoxicants (DUII), in violation of O.R.S. § 813.010. Petitioner plead guilty to DUII and entered into diversion on or about November 6, 2023. The case was dismissed via successful completion of diversion on or about December 2, 2023. *Id.* at ¶ 10.

On October 19, 2023, Petitioner was cited for Driving While Suspended or Revoked (DWS), in violation of O.R.S. § 811.182(4). *Id.* at ¶ 11. On or about November 22, 2023, Petitioner failed to appear in court to be arraigned on his DWS charge and a warrant was issued for his arrest. *Id.* at ¶ 12. On November 24, 2023, Petitioner wrote a letter to Washington County Circuit Court,

requesting that he be allowed to “appear on the ‘TURN SELF IN’ docket.” The request was granted. *Id.* at ¶ 13.

On December 10, 2023, a police officer cited Petitioner in lieu of arrest on the warrant. *Id.* at ¶ 14. On May 8, 2024, Petitioner plead guilty to DWS and was convicted and sentenced to 18 months’ bench probation. *Id.* at ¶ 15. On June 12, 2025, Petitioner was arrested in Beaverton, Oregon for Hit and Run, in violation of O.R.S. § 811.700. *Id.* at ¶ 16.

On July 14, 2025, Petitioner failed to self-report check-in with ISAP. *Id.* at ¶ 17. On September 25, 2025, Petitioner failed to conduct a biometric check-in with ISAP. *Id.* at ¶ 18. On October 10, 2025, Petitioner failed to attend a virtual office visit with ISAP. *Id.* at ¶ 19. On October 14, 2025, Petitioner failed to attend a second virtual office visit with ISAP. *Id.* at ¶ 20.

On December 19, 2025, Petitioner was arrested by DHS. DHS intended to transport Petitioner to the Northwest ICE Processing Center in Tacoma, Washington. Prior to the transfer taking place ICE was ordered by this Court not to transfer Petitioner from the District of Oregon without at least 48 hours’ notice. Because DHS does not have a long-term holding facility in Oregon, DHS had to release Petitioner on this date, despite concerns Petitioner was a flight risk and potential danger to the community. *Id.* at ¶ 21.

LEGAL STANDARD

“The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]” *Exxon Mobil Corp. v. Allapattah Servs., Inc.* 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]” *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). To warrant a grant of habeas

corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

Under 8 U.S.C. § 1226(a), the Department of Homeland Security (“DHS”) may, in its discretion, detain a noncitizen during removal proceedings, release them on bond, or release them on conditional parole. By regulation, immigration officers can release a noncitizen if the noncitizen 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).

DHS “at any time may revoke a bond or parole authorized under subsection (a), rearrest the noncitizen 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(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 cancelled.”).

When DHS takes a noncitizen back into custody, the person 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 hearing, or bond hearing, the immigration judge, as an initial matter, determines whether the noncitizen is detained pursuant to 8 U.S.C. § 1226(a) and therefore eligible for custody redetermination. If the immigration judge makes such a finding, the immigration judge may continue detention or release the noncitizen on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). At the hearing, the alien 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); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien may appeal an immigration judge’s custody redetermination to the Board of Immigration Appeals. 8 C.F.R. § 236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

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 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). While Section 1225 does not provide for noncitizens to be released on bond, DHS has the sole discretionary authority to release any applicant for admission on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

ARGUMENT

Petitioner is an applicant for admission subject to mandatory detention. The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible and removable noncitizens and to ensure that noncitizens who are removable are in fact removed from the United States. “[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that removal proceedings “would be in vain if those accused could not be held in custody

pending the inquiry” of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the “plain meaning” of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings).

The plain language of the statute is clear: Petitioner is subject to detention under Section 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C. §1225(b)(2)(A). The INA specifies that “[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this Act an applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that he is a noncitizen who is present in the United States without having been admitted. Thus, Petitioner is an “applicant for admission” and subject to mandatory detention under Section 1225(b).

Furthermore, DHS lawfully revoked Petitioner’s parole because he violated the terms of his release by failing to appear at check-ins and office visits as his commission of crimes involving the safety of the public.

Respondents acknowledge that this Court has held that detention under § 1225(b)(2) is unlawful. *Guzman v. Weiss*, 6:25-cv-02146-MC; *see also J.Y.L.C. v. Bostock*, 2:25-cv-02083-AB, ECF 15 (D. Or. Nov. 12, 2025); *S.Z.D. v. Wamsley*, 3:25-cv-01931-AB, ECF 12 (D. Or. Oct. 29, 2025). Additionally, in *Maldonado Bautista v. Santacruz*, the district court reached a similar conclusion in extending declaratory relief to a certified class that would include Petitioner, if that

decision was binding on this Court. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). However, the *Maldonado Bautista* decision is not binding on this Court. *See Alberto Rodriguez v. Jeffreys*, No. 8:25-cv-714, 2025 WL 3754411, at *6-10 (D. Neb. Dec. 29, 2025).

A. Petitioner was justifiably detained by Respondent and therefore cannot support a claim for violation of his Fifth Amendment rights to due process.

Petitioner bears the burden of establishing this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioner cannot meet his burden of demonstrating that his due process rights were violated by his detention. An individual determination was made, and an administrative warrant was properly issued to detain Petitioner after his multiple failures to comply with required check-ins and multiple actions on the part of Petitioner demonstrating he was a flight risk.

Petitioner's Fifth Amendment due process claim is also barred by the jurisdictional framework set forth in 8 U.S.C. §§ 1252(g) and 1252(b)(9). While the Fifth Amendment protects all persons within the United States, including unlawfully present aliens, due process claims arising from removal proceedings should be raised in the forum Congress designated such claims be heard. Due process protections for aliens in removal proceedings are extensive and are properly reviewed through the immigration court and petition for review process. These include the right to a hearing, the right to counsel, the right to present evidence, and the right to cross-examine witnesses. Petitioner has not been denied these protections, but rather, he has been served with a Notice to Appear and will have a full hearing before an immigration judge where he may raise any Fifth Amendment due process claims relevant to their proceedings. Petitioner seemingly speculates he might suffer an amorphous due process violation in the form of being removed "to a country other

than the one designated in his original removal order” without certain procedural safeguards. Pet. ¶¶ 47–48. Not only is ICE unaware of any evidence that Petitioner has been ordered removed, but even if Petitioner had been ordered removed, he presents no facts that this alleged harm is anything more than speculative. *See Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) (a claim seeking “an injunction barring *future* unconstitutional procedures did *not* fall within habeas’ exclusive domain.”) (emphases in original). Petitioner has failed to state any facts in this Petition demonstrating he has been denied due process in any forum, and therefore his Fifth Amendment claim should be dismissed for failure to state a claim.

Further, Petitioner’s assertion that Respondents acted “arbitrary and capriciously” when they detained Petitioner is without merit. As set forth above, Petitioner was detained, with a validly issued administrative warrant, because of numerous failures to appear and concerns over public safety given Petitioner’s criminal actions. In particular, on six different occasions Petitioner failed to appear either in State court proceedings or for appointments with immigration officials. In addition, despite a conviction of driving while intoxicated and the loss of his license, he continued to operate a vehicle and then was subsequently arrested for a hit and run violation. Petitioner’s blatant disregard for criminal and immigration law rendered him a danger and flight risk, which warranted ICE revoking his parole and taking him into custody.

B. If the Court finds detention would have been appropriate under 8 U.S.C. § 1226(a), the Court should order an immigration judge conduct a bond hearing.

Even if Petitioner could not be detained under 8 U.S.C. § 1225(b)(2), Petitioner’s lengthy history of criminal violations and inability to comply with his release conditions would render him subject to detention under 8 U.S.C. § 1226. As previously mentioned, Petitioner’s flight risk and danger to the public is apparent given his history. Accordingly, under the INA, Petitioner bears the burden of demonstrating to an immigration judge that he should be released from detention.

Guerra, 24 I&N Dec. at 38. If the Court finds 8 U.S.C. § 1226 is the more appropriate detention authority for Petitioner, the Court should not order immediate release from custody. Rather, the Court should order that a bond hearing, pursuant to section 1226, be conducted to allow the administrative process to play out as Congress intended. Not only do immigration judges have the specialized knowledge to make bond determinations specifically under the INA, but the administrative system also contains robust due process violations, including avenues to appeal a bond determination. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Ordering immediate release would circumvent the system that was designed to address these concerns. Ordering that a bond hearing be conducted pursuant to 8 U.S.C. § 1226(a) is the appropriate remedy if the Court finds section 1226(a) is the proper detention authority.

CONCLUSION

Respondents respectfully request that Petitioner's habeas petition be denied or in the alternative, that this Court order a bond hearing before an Immigration Judge rather than a permanent release.

DATED this 7th day of January 2026.

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/s/ Susanne Luse
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