Chief Magistrate Judge Theresa L. Fricke

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

YADIEN BEALTER REYES, *et al.*, Petitioners, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:26-cv-00270-TLF FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: February 17, 2026

I. INTRODUCTION

This Court should deny Petitioners Yadien Bealter Reyes, Eulis Enrique Nunez Nunez, and Pedro Romanely Ponce Baque's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet.").[2] Petitioners challenge their detention at the Northwest ICE Processing Center ("NWIPC") while they remain in removal proceedings.

As detailed below, Petitioners are applicants for admission whose detention is mandatory under 8 U.S.C. § 1225(b), which precludes a bond hearing and renders their reliance on 8 U.S.C.

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.
[2] If the Court does not grant the parties' stipulated motion to sever Petitioner Mohamed Hasan Hussaini, the Court should deny Petitioner Hussaini's habeas petition for additional, independent reasons, or at minimum permit supplemental and separate briefing regarding Petitioner Hussaini.

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§ 1226(a) inapplicable. Recent authority from the Fifth Circuit—while not binding in this Circuit—supports this statutory framework and confirms that noncitizens in Petitioners' posture remain subject to mandatory detention under Section 1225(b)(2)(A) notwithstanding prior release on recognizance or parole. As described herein, the facts in this situation do not support a blanket requirement of written notice and a hearing prior to Petitioner's detention. At most, if this Court were to grant relief, it should order Petitioners be provided with a post-deprivation hearing. For these reasons, the Court should deny the Petition in its entirety.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioners

1. Petitioner Yadien Bealter Reyes ("Ms. Bealter Reyes")

Ms. Bealter Reyes is a native and citizen of Cuba who was entered the United States at Del Rio, Texas, on or about February 13, 2022, without being admitted or paroled and not in possession of a valid immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations. Declaration of Deportation Officer Gilbert Bolof ("Bolof Decl.") ¶ 4.

U.S. Customs and Border Patrol ("CBP") encountered Ms. Bealter Reyes on February 13, 2022, and transported her to the Brackettville Border Patrol Station in Brackettville, Texas, for further processing. *Id.* ¶ 5. Ms. Bealter Reyes was transferred to the South Texas Family Residential Center in Dilley, Texas, on February 16, 2022. *Id.* ¶ 6. Ms. Bealter Reyes was released from the South Texas Family Residential Center on an Order of Release on Recognizance ("OREC") on February 22, 2022. *Id.* ¶ 7; Declaration of Alixandria Morris ("Morris Decl."), Ex. 3 (OREC). Conditions of her OREC include requirements that she not violate any local, State, or

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Federal laws or ordinances, and that she not commit any crimes while released. Bolof Decl. ¶ 7; Morris Decl., Ex. 3.

On April 8, 2024, DHS issued a Notice to Appear ("NTA") alleging, in part, that Petitioner was removable from the United States pursuant to sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), in that she was present in the United States without being admitted or paroled, and at the time of application for admission, she was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations. Bolof Decl. ¶ 8; Morris Decl., Exs. 1-2 (NTA; I-213). Ms. Bealter Reyes was placed into immigration court with Executive Office for Immigration Review ("EOIR") Miami, Florida on this same date. Bolof Decl. ¶ 8.

Ms. Bealter Reyes never obtained counsel for any of her immigration proceedings. *Id.* ¶ 9. Ms. Bealter Reyes had a master hearing with EOIR Miami on September 27, 2024. The case was continued. *Id.* ¶ 10. Ms. Bealter Reyes filed an E-33 Change of Address form with EOIR Miami on February 14, 2025, and again on March 31, 2025. *Id.* ¶ 11. However, she did not file a motion for change of venue. *Id.* Ms. Bealter Reyes was arrested in Hermiston, Oregon, for Theft I on March 2, 2024. *Id.* ¶ 12. Criminal charges remain pending. *Id.*

On December 23, 2025, Ms. Bealter Reyes reported to ERO in Richland, Washington. *Id.* ¶ 13. Her OREC was revoked on that same day based on her violation of OREC conditions, specifically that she had violated state law. *Id.* ERO also served Ms. Bealter Reyes with a notice of detention and warrant for arrest. *Id;* Morris Decl., Ex. 4 (Arrest Warrant). Ms. Bealter Reyes was transferred to the NWIPC on December 23, 2025. Bolof Decl. ¶ 14. She is being detained per

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INA § 235. *Id.* Ms. Bealter Reyes had master hearings on January 22, 2026, and February 2, 2026. Both hearings were continued on Ms. Bealter Reyes' request. *Id.* ¶ 15.

Ms. Bealter Reyes's next master hearing is scheduled for February 17, 2026. *Id.* ¶ 16. As of the date of this declaration, Ms. Bealter Reyes has not requested a Bond Hearing. *Id.* ¶ 17. Ms. Bealter Reyes is mandatory detention to pursuant to INA § 235(b)(2)(A). *Id.* ¶ 18.

2. Petitioner Eulis Enrique Nuñez Nuñez ("Mr. Nuñez")

Petitioner Eulis Enrique Nuñez Nuñez ("Mr. Nuñez") is a native and citizen of Venezuela who entered the United States without being admitted or paroled. Bolof Decl. ¶ 19. U.S. Customs and Border Patrol ("CBP") encountered and arrested Mr. Nuñez at or near Eagle Pass, Texas, on or about November 13, 2023, having determined he was present in violation of immigration law. *Id.* ¶ 20. He was then transported to the CBP station for further processing. *Id.*

On November 14, 2023, CBP issued Mr. Nuñez a Notice to Appear ("NTA") alleging Mr. Nuñez was inadmissible to the United States pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), and scheduling Mr. Nuñez to report to the immigration court in Denver, Colorado, for his removal proceedings. *Id.* ¶ 21; Morris Decl., Exs. 5-6 (NTA; I-213). On the same day, Mr. Nuñez was released on an Order of Release on Recognizance ("OREC"), imposing reporting requirements and conditions on his release, including the requirement that Mr. Nuñez report to the local ERO field office near his intended address. Bolof Decl. ¶ 22; Morris Decl., Ex. 7 (OREC). Pursuant to his OREC, Mr. Nuñez was then enrolled in the Alternatives to Detention ("ATD") program for the local ERO field office to later determine the level of monitoring necessary. Bolof Decl. ¶ 22.

On March 22, 2024, Mr. Nuñez appeared before the immigration judge in Denver for a master calendar hearing. *Id.* ¶ 23. Mr. Nuñez subsequently motioned to change venue to the immigration court in Portland, Oregon, which was granted by the immigration judge. *Id.* Mr.

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Nuñez was expected to next appear before the immigration judge in Portland on December 21, 2026. *Id.*

On January 4, 2026, ERO arrested Mr. Nuñez following a records checks indicating the registered owner, Mr. Nuñez, was present in the United States without any lawful immigration status. *Id.* ¶ 24. Mr. Nuñez was arrested without incident and transported to the local ERO office for processing. *Id.* Mr. Nuñez was served a copy of his I-200 arrest warrant. *Id.*; Morris Decl., Ex. 8 (Arrest Warrant).

On the same day, Mr. Nuñez was transported to the NWIPC in Tacoma, Washington. Bolof Decl. ¶ 25. Petitioner has not requested a bond hearing. *Id.* ¶ 26. Petitioner remains detained under Section 235(b) of the INA. *Id.* ¶ 27.

3. Petitioner Pedro Romanely Ponce Baque ("Mr. Ponce Baque")

Mr. Ponce Baque is a native and citizen of Venezuela who entered the United States without inspection or parole at or near Eagle Pass, Texas on or about June 28, 2023. Bolof Decl. ¶ 28. On June 28, 2023, Mr. Ponce Baque was arrested by the Texas Department of Public Safety in Maverick County, Texas, for the offense of criminal trespass. *Id.* ¶ 29.

On July 6, 2023, Petitioner was encountered by ICE Officers at the Manuel Segovia Unit in Edinburg, Texas and processed for expedited removal. *Id.* ¶ 30. A detainer was lodged for Mr. Ponce Baque to be taken into DHS custody upon release from the custody of the state of Texas. *Id.*

On August 11, 2023, Petitioner Ponce Baque claimed fear of return to Venezuela. *Id.* ¶ 31. He was therefore scheduled for a credible fear interview with U.S. Citizenship and Immigration Service ("USCIS"). *Id.* Following a credible fear interview, on August 30, 2023, Mr. Ponce Baque was served with a Notice to Appear charging him as inadmissible under sections (212)(a)(7)(A)(i)(I) and 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), in that

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Mr. Ponce Baque did not have any valid documents to enter or remain in the United States, and in that he entered the United States without being admitted or paroled. *Id.* ¶ 32; Morris Decl., Exs. 9-10 (NTA; I-213).

On September 5, 2025, Mr. Ponce Baque received and signed an Interim Notice Authorizing Parole, granting parole for a period of one year under INA 212(d)(5), subject to compliance with separately identified conditions. Bolof Decl. ¶ 33; Morris Decl., Ex. 11 (Parole). He was then released from ICE custody with alternative to detention ("ATD") conditions. Bolof Decl. ¶ 32; Morris Decl., Ex. 11. ATD violations are documented by BI, the contractor who runs the ATD program. Bolof Decl. ¶ 35. ATD violation information recorded by BI, including the date and type of violation, is automatically pulled into an ICE database which ERO has ongoing access to in the regular course of duties. *Id.* Deportation Officer Bolof has access to this database and reviewed Petitioner's violations, which reflect that on or about September 18, 2025, Petitioner was outside the zone permitted in violation of the terms of his ATD. *Id.*

On December 12, 2025, immigration officers in Seattle, WA, encountered Mr. Ponce Baque during a targeted enforcement operation. *Id.* ¶ 36. After obtaining an administrative warrant, the vehicle Mr. Ponce Baque was driving was stopped by a Border Patrol agent. *Id.* ¶ 36; Morris Decl., Ex. 12 (Arrest Warrant). Mr. Ponce Baque stopped his vehicle, but when asked to exit the vehicle, he refused to comply with the immigration officer's directions, and resisted arrest. Bolof Decl. ¶ 36. After a brief struggle, Mr. Ponce Baque was successfully restrained and transferred to the Seattle Field Office for processing without further incident. *Id.*

On December 12, 2025, Mr. Ponce Baque was interviewed by an ERO officer after the arrest and claimed no medical problems related to the arrest. *Id.* ¶ 37. Mr. Ponce Baque did not request further medical attention or evaluation. *Id.* Mr. Ponce Baque's case has been transferred

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to the Tacoma Immigration Court and is set for a hearing on February 17, 2026, on the 2023 Notice to Appear. *Id.* ¶ 38. Mr. Ponce Baque has not requested a bond hearing. *Id.* ¶ 39.

B. Detention Authority

1. 8 U.S.C. § 1225(b)

Petitioner is an applicant for admission who is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *See In Re. Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Applicants for admission fall into one of two categories. Section 1225(b)(1) covers noncitizens 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 v. Rodriguez*, 583 U.S. 281, 287 (2018).

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). While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory detention, they may be subject to parole by the Attorney General or Department of Homeland Security ("DHS"), and that is not an issue that the Immigration Judge has authority to consider. *See* Immigration and Nationality Act ("INA") § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a).

In contrast to mandatory detention under 8 U.S.C. § 1225(b), 8 U.S.C. § 1226(a) applies to aliens in removal proceedings who are not subject to mandatory detention and grants the Secretary discretionary authority to detain the alien or release him on bond or conditional parole, subject to a custody redetermination hearing before an immigration judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19(a). At such hearing, the alien bears the burden to show he is not a flight risk

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or danger to the community. 8 C.F.R. § 236.1(c)(8); *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006).

2. Revocation of Discretionary Release from Detention

8 C.F.R. § 1236.1(c)(8) provides that "[a]ny officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." Section 236.1(c)(9) provides for the revocation of such release: "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, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained."

There is no statutory or regulatory requirement for a hearing before an individual is re-detained, and the Supreme Court has warned courts against reading additional procedural requirements into the Immigration and Nationality Act. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). Furthermore, DHS is not restricted from rearresting noncitizens absent a change in circumstance. *See Matter of Sugay*, 17 I&N. Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). ("[T]he district court never held that *Sugay* requires these hearings."). Other courts have recognized that *Sugay*'s dicta is not "binding on ICE." *Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19 (S.D.N.Y. Dec. 27, 2018).

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Federal Respondents acknowledge that district courts have recently decided that the revocation of an order of recognizance (OREC) requires a pre-detention hearing to determine if that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination set forth in Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)). Both Sections provide that the decisions to release or revoke are discretionary. But Section 1231(c)(8) includes language requiring the officer to decide that the alien "would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." In contrast, Section 1231(c)(9) does not require such a determination and specifically provides that "release may be revoked at any time."

III. LEGAL STANDARD

This Court has jurisdiction to review Petitioners' habeas claims under 28 U.S.C. § 2241, as habeas jurisdiction extends to challenges to immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). However, the Petition fails on the merits. Each of the three Petitioner's detention is lawful, and their claims of constitutional and statutory violations are without merit.

IV. ARGUMENT

A. Petitioners' Are Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)

8 U.S.C. § 1225(b) mandates detention for inadmissible aliens like Petitioners, who entered without inspection and are charged under 8 U.S.C. § 1182(a)(6)(A)(i). *See* 8 U.S.C. § 1225(b)(2)(A) (requiring detention for applicants for admission not clearly entitled to entry pending 8 U.S.C. § 1229a proceedings). The Supreme Court has held that this provision does not contain any implied right to a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018)

UNITED STATES ATTORNEY
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(no implied bond hearing under 8 U.S.C. § 1225(b)); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 115 (2020).

The Fifth Circuit's recent decision further supports this conclusion. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). There, the court held that noncitizens who entered without inspection and were later placed in removal proceedings remained "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A), even though they had previously been released. The Fifth Circuit reversed district court orders requiring bond hearings or release, explaining that § 1225(b) establishes a categorical detention mandate that is not displaced by temporary release mechanisms such as parole or orders of recognizance. *Id.* at *7.

Although *Buenrostro-Mendez* is not binding in the Ninth Circuit, its reasoning is persuasive and consistent with the text of § 1225(b), *Jennings*, and longstanding agency interpretation that an individual who entered without inspection remains an applicant for admission unless and until lawfully admitted. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioners' re-detention, following revocation of their OREC (or parole in the case of Petitioner Ponce Baque), properly falls under 8 U.S.C. § 1225(b) as an enforcement action against an inadmissible alien. Revocation was discretionary under 8 C.F.R. § 236.1(c)(9) and does not require evidence of a specific OREC (or parole) violation; it may occur at any time, including when an alien is encountered during a lawful operation targeting another individual. *See* 8 C.F.R. § 236.1(c)(9). No bond hearing is required post-revocation under 8 U.S.C. § 1225(b). Courts in this district confirm that 8 U.S.C. § 1225(b) detainees are not entitled to IJ bond hearings. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1110 (W.D. Wash. 2019) (distinguishing 8 U.S.C. § 1225(b) from bond-eligible provisions).

UNITED STATES ATTORNEY
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While *E.A. T.-B. v. Wamsley*, required a bond hearing for prolonged detention post-OREC revocation under 8 U.S.C. § 1225(b), Petitioners' brief custody of less than two months[3], does not meet the threshold for such relief. *See Wamsley,* 795 F. Supp. 3d at 1324.

Federal Respondents acknowledge that courts in this District have reached the opposite conclusion. *See, e.g.*, *P.T. v. Hermosillo,* No. 25-cv-2249-KKE, 2025 WL 3294988, at *2 n.1 (W.D. Wash. Nov. 26, 2025) (collecting cases); *Rodriguez Vazquez v. Bostock*, 802 F. Supp. 3d 1297, 1322 (W.D. Wash. 2025); *Singh v. Noem*, No. 26-cv-00079-DGE, 2026 WL 265670, at *3-4 (W.D. Wash. Feb. 2, 2026). These courts have found that the noncitizens were instead subject to detention under 8 C.F.R. § 1226(a).

However, Federal Respondents note that it is well settled that district court decisions do not freeze the law. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (internal quotations omitted). As the Supreme Court further explained in *Camreta*, "district court decisions—unlike those from the courts of appeals—do not necessarily settle constitutional standards or prevent repeated claims." *Id*. The principle present in *Camreta* remains particularly true here where the Fifth Circuit's recent decision warrants a fresh look at this legal issue.

Thus, while Federal Respondents do not consent to issuance of the writ and reserve all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented and are summarized in *Rodriguez Vazquez v. Bostock*,

[3] Petitioner Reyes was re-detained on December 23, 2025, rendering her detention as of the date of this petition as one month, 17 days. Bolof Decl. ¶ 13. Petitioner Nuñez was re-detained on January 4, 2026, rendering his detention as of the date of this petitioner as one month, 5 days. *Id.* ¶ 24. Petitioner Ponce Baque was re-detained on December 2, 2025, rendering his detention as one month, 18 days. *Id.* ¶ 35. Thus, all Petitioners have been detained less than two months as of the date of this filing.

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802 F. Supp. 3d 1297 (W.D. Wash. Sept. 30, 2025), and this Court can decide this issue without further briefing.

Petitioners do not dispute that they are subject to mandatory detention. Instead, Petitioners challenge their re-detention in December 2025 and January 2026 as violative of procedural due process. Pet., ¶¶ 63-76. Petitioner asserts that DHS was required to provide them with written notice and a pre-detention hearing before a neutral decisionmaker. *Id.*, ¶ 68. Although Federal Respondents acknowledge that district courts have found that due process requires pre-detention hearings prior to re-detention of an alien, as described below, due process did not require pre-detention hearings here. Accordingly, this Court should not grant Petitioners' request for immediate release from immigration detention.

B. Petitioners' re-detention did not require pre-deprivation hearings to comply with due process.

A pre-deprivation hearing to determine whether Petitioners were a flight risk or dangerous was not required prior to their arrest in December 2025 and January 2026. Pet., ¶¶ 63-76. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35. As described below, the facts in this situation do not support a blanket requirement of written notice and a hearing prior to Petitioner's detention.

Due process does not mandate pre-detention hearings for Petitioners here. As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at

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*11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).

As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Thus, Federal Respondents acknowledge that Petitioners had some liberty interest in their continued freedom from detention while on parole or OREC. While Petitioners possessed a conditional liberty interest while on OREC or parole, that interest was expressly contingent on compliance with ATD conditions. Petitioner Reyes and Petitioner Ponce Baque's violations of conditions substantially reduced the weight of that interest. In the case of Petitioner Reyes, she both committed the crime of Theft in the first degree in Oregon on March 2, 2024, while on release and unlawfully changed locations without filing or obtaining a change of venue. Bolof Decl. ¶¶ 11-13. Petitioner Ponce Baque also violated the conditions of his release by being outside the zone permitted in violation of the terms of his ATD on September 18, 2025. *Id.* ¶ 35.

Turning to the second *Mathews* factor, the risk of a constitutionally significant and erroneous deprivation of Petitioners' liberty did not necessitate a pre-deprivation hearing. The Supreme Court has held that "the Constitution requires some kind of hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing

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is not appropriate in every situation. *Id.*, at 128 (noting there may be "special case[s]" where a pre-deprivation hearing is impracticable). Petitioner Reyes and Petitioner Ponce Baque's re-detention qualify as special cases due to Petitioner Reyes' criminal charge and violations of her conditions of release and Petitioner Ponce Baque's change of location without consent from ICE which constituted a violation of the terms of his ATD.

In *Martinez Hernandez v. Andrews*, the district court found that allegations of ATD violations that "are not obviously pretextual as in *E.A.T.-B*[4]" provided at least an arguable basis "that providing [the petitioner] with notice and a pre-deprivation hearing would have been impracticable and/or would have motivated his flight." *Martinez Hernandez*, 2025 WL 2495767, at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous deprivation could be reduced through a "prompt, post-deprivation process." *Id.* (collecting cases).

There is no need for an evidentiary hearing to determine Petitioners' status as an alien subject to mandatory detention – as that would not change. To wit, a pre-deprivation hearing would be futile as their detention is based on their mandatory detention. An analysis of Petitioners' dangerousness or flight risk is likewise not relevant. However, if this Court were to order a hearing, Petitioners Reyes and Petitioner Ponce Baque should not be released as their violations of conditions of release (and criminal charge in the case of Petitioner Reyes) provided ICE with a basis to arrest them without notice. Instead, if this Court were to grant relief, it should order Petitioners be provided with a post-deprivation hearing.

Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test and procedural safeguards "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's

[4] *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

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2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in protecting immigration proceedings from unnecessary delay.

Federal Respondents acknowledge that district courts have found that the revocation of OREC (or parole) requires a pre-deprivation hearing to determine if that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025).

However, "[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (internal quotations omitted). While *Camreta* arose in the qualified-immunity context, the Court's reasoning applies with equal force here.

Here, Petitioners are subject to mandatory detention. Where detention is mandatory, a pre-detention hearing would serve no purpose because release is not legally available. *Calderon v. Noem*, No. 2:25-cv-2136, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025) ("The cases cited by Mr. Calderon are inapposite because none of them involved mandatory detention (under the LRA or otherwise).") "Accordingly, a pre-detention hearing could only have one outcome: detention." *Id.* Accordingly, Petitioners are lawfully detained, and this Court should deny their request for release from immigration custody.

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C. Even if this Court were to enjoin Petitioners' re-detention without a pre-deprivation hearing, due process does not require the Government to bear the burden of proof at such a hearing.

Petitioners' request for a hearing with the burden on the government by clear and convincing evidence is contrary to law. The Supreme Court has rejected reading such requirements into immigration detention statutes. *See Jennings v. Rodriguez*, 583 U.S. 281, 303-04 (2018); *see also, Johnson v. Arteaga-Martinez*, 596 U.S. 149, 157-58 (2022). No Supreme Court case has ever required the Government to justify immigration detention by clear and convincing evidence. Thus, even if this Court should order Petitioner's release, this Court should not grant his request to grant their request for "a hearing prior to re-detention where ***Respondents must prove by clear and convincing evidence*** that each Petitioner is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks." Pet., Prayer for Relief ¶ 4 (emphasis added).

The government has *never* borne the burden to justify detention by clear and convincing evidence. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) ("We are aware of no Supreme Court case placing the burden on the government to justify the continued detention of [a noncitizen], much less through an elevated 'clear and convincing' showing."). In fact, even when considering a noncitizen subjected to potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court has placed the burden on the noncitizen, as opposed to the Government, to justify release. *See Zadvydas v. Davis,* 533 U.S. 678, 701(2001). Thus, the Court should not order ICE to bear the burden of proof, much less by clear and convincing evidence. At most, the Government should be required to demonstrate dangerousness or flight risk by preponderance of the evidence in line with the immigration officer's initial determination. 8 C.F.R. § 1236.1(c)(8).

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V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition.

Dated this 9th day of February, 2026.

Respectfully submitted,

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I certify that this memorandum contains 4,991 words, in compliance with the Local Civil Rules.