

District Judge Jamal N. Whitehead

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

JAIRO ESPINOZA PALACIOS, *et al.*,

Petitioners,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00491-JNW

FEDERAL RESPONDENTS'¹ RETURN

Noted for consideration:
March 2, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) detains the ten named unrelated Petitioners at the Northwest ICE Processing Center (“NWIPC”) pursuant to 8 U.S.C. § 1225(b). Petitioners, who all had previously been released from immigration detention, claim that their re-detention violates procedural due process in that they assert that the government was required, and failed, to provide written notice and a pre-deprivation hearing before detention. *See* Pet., ¶¶ 170-73. This claim fails to look at each noncitizen’s re-detention independently as procedural due process is flexible and should be individually suited to the circumstances at hand. While

¹ Respondent Bruce Scott is not a federal employee and not represented by undersigned counsel.

1 Federal Respondents do not concede that hearings were required for any of the re-detentions here,
 2 due process does not mandate that all re-detentions require a pre-deprivation hearing. *See Safi v.*
 3 *Noem*, No. 2:26-cv-00308-TLF, 2026 WL 445564, at *4 (W.D. Wash. Feb. 17, 2026) (finding
 4 that a prompt post-deprivation hearing would be appropriate based on the individual facts of the
 5 case).

6 Petitioners further ask this Court to “permanently enjoin their re-detention during the
 7 pendency of their removal proceeding absent written notice and a hearing prior to re-detention
 8 where Respondents must prove by clear and convincing evidence that each Petitioner is a flight
 9 risk or danger to the community and that no alternatives to detention would mitigate those risks”
 10 Pet., Prayer for Relief, ¶ 4. In addition, they seek a declaratory judgment that future re-detention
 11 without these procedures during removal proceedings violates due process. *Id.*, ¶ 6. But
 12 Petitioners fail to allege that re-detention is likely to occur without proper notice and an
 13 opportunity to be heard. Even if they did, such an assertion would be speculative at best, and
 14 certainly could not encompass every circumstance leading to re-detention. Accordingly, this
 15 Court should deny Petitioner’s request for permanent injunctive relief. *Torres v. Hermosillo*, No.
 16 2:25-cv-02687-LK, 2026 WL 145715, at *8 (W.D. Wash. Jan. 20, 2026).

17 For Petitioners’ factual backgrounds, Federal Respondents respectfully refer this Court to
 18 the Declaration of Brett Booth, submitted herewith.

19 II. LEGAL BACKGROUND

20 A. Section 1225(b) Detention

21 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
 22 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
 23 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
 24 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims

1 and expeditiously removing the aliens making such claims from the country.”). Section 1225
2 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
3 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
4 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
5 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
6 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S.
7 281, 287 (2018) (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for
8 applicants for admission until certain proceedings have concluded.”).

9 **1. Section 1225(b)(1)**

10 Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially
11 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.”
12 *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of
13 any noncitizen “described in” Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney
14 General or Secretary of Homeland Security – that is, any noncitizen not “admitted or paroled into
15 the United States” and “physically present” fewer than two years – who is inadmissible under
16 Section 1182(a)(7) at the time of “inspection.” *See* 8 U.S.C. § 1182(a)(7) (categorizing as
17 inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry
18 or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen
19 for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to
20 § 1182(a)(7). The Attorney General’s or Secretary’s authority to “designate” classes of
21 noncitizens as subject to expedited removal is subject to his or her “sole and unreviewable
22 discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass’n v.*
23 *Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

1 The Secretary (and earlier, the Attorney General) has designated categories of noncitizens
2 for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring
3 the expedited removal scope to “the fullest extent authorized by Congress.” *Designating Aliens*
4 *for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS “to
5 place in expedited removal, with limited exceptions, aliens determined to be inadmissible under
6 [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States
7 and who have not affirmatively shown, to the satisfaction of an immigration officer, that they
8 have been physically present in the United States continuously for the two-year period
9 immediately preceding the date of the determination of inadmissibility,” who were not otherwise
10 covered by prior designations. *Id.*, at 8139-40.

11 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
12 if a noncitizen indicates an intention to apply for asylum² or expresses a fear of persecution,
13 torture, or return to the noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. §
14 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the
15 noncitizen is “removed from the United States without further hearing or review.” 8 U.S.C.
16 §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f),
17 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the
18 noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains
19 subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

20 Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal
21 under Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to
22

23 ² Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except
24 if the noncitizen can demonstrate “extraordinary circumstances” that justify moving that deadline. *Id.*
§ 1558(a)(2)(D).

1 appear and conducted before an immigration judge, during which the noncitizen may apply for
2 relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,
3 statutorily defined circumstances – typically to individuals apprehended at or near the border who
4 lack valid entry documents or commit fraud upon entry – and allows for their removal without a
5 hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS
6 has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter*
7 *of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

8 **2. Section 1225(b)(2)**

9 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S.
10 at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under Section
11 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to mandatory detention
12 pending full removal proceedings “if the examining immigration officer determines that [the]
13 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
14 1225(b)(2)(A); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir.
15 Feb. 6, 2026) (affirming the government’s position that aliens who have not been admitted or are
16 not entitled to be admitted to the United States are “applicants for admission” who are subject to
17 mandatory detention under Section 1225(b)(2)(A)); *but see Rodriguez Vazquez v. Bostock*, 802
18 F. Supp. 3d 1297 (W.D. Wash. 2025) (finding that detention pursuant to 8 U.S.C. § 1225(b)(2) of
19 the Bond Denial Class is unlawful).

20 As the Fifth Circuit recently found, aliens who are present without admission in the United
21 States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-Mendez*, 2026
22 WL 323330, at *4. The court clarified that an “applicant for admission” is a person “seeking
23 admission” regardless of whether that person is actively engaged in admissions procedures when
24 detained. *Id.*, at 5-6.

B. Discretionary Release

The sole means of release from detention pursuant to Section 1225(b) is temporary parole ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283. Parole automatically terminates if the noncitizen departs from the United States or “at the expiration of the time for which parole was authorized,” and “no written notice shall be required” for automatic termination. 8 C.F.R. § 212.5(e)(1). In all other cases, parole is terminated when the purpose for which parole was authorized has been accomplished or an authorized DHS official decides that “neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States.” 8 C.F.R. § 212.5(e)(2)(i); *see also* 8 U.S.C. § 1182(d)(5)(A) (“[W]hen the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled[.]”). In these circumstances, written notice of the termination is required. When a charging document is served on the alien, the charging document serves as the notice of termination of parole. 8 C.F.R. § 212.5(e)(2)(i). Upon termination of parole, the applicant reverts to the status that he or she had at the time of parole. 8 C.F.R. § 212.5(e).

Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under Section 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.³ 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). This discretionary

³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

1 release is done with the issuance of an order of release on recognizance (“OREC”) issued by
2 DHS.

3 A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an
4 immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a);
5 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration
6 judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. §
7 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether
8 to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine
9 factors for immigration judges to consider).

10 However, the release of a noncitizen on OREC prior to July 2025 should not determine
11 whether that person’s detention authority is currently governed by Section 1225(b) or Section
12 1226(a). On July 8, 2025, DHS issued a memorandum to ICE employees explaining that DHS
13 had revisited its legal position on detention and release authorities. *Rodriguez v. Bostock*, 802 F.
14 Supp. 3d 1297, 1308 (W.D. Wash. 2025). The memorandum defined an “applicant for admission”
15 as “an alien present in the United States who has not been admitted or who arrives in the United
16 States, whether or not at a designated port of arrival. *Id.* (citing 8 U.S.C. § 1225(a)(1)). Prior to
17 July 2025, DHS allowed discretionary releases of aliens that fit the definition of an applicant for
18 admission pursuant to 8 C.F.R. § 1236.1(c)(8), instead of only utilizing parole.

19 But the memorandum clarified, “Effective immediately, it is the position of DHS that such
20 aliens are subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE
21 custody except by [8 U.S.C. § 1182(d)(5)].” *Rodriguez*, 802 F. Supp. 3d at 1308. However,
22 DHS’s prior practice of OREC releases for applicants for admission does not mean that those
23 aliens are no longer applicants for admissions. *Buenrostro-Mendez*, 2026 WL 323330, at *8
24 (“While that is true, the government's past practice has little to do with the statute's text. The text

1 says what it says, regardless of the decisions of prior Administrations. Years of consistent practice
2 cannot vindicate an interpretation that is inconsistent with a statute's plain text.”).

3 While Federal Respondents acknowledge that courts in this District, including this Court,
4 have found that a person released on OREC to not be detained under Section 1225(b), Petitioner’s
5 claim in this litigation only concerns the legality of Petitioners’ re-detentions. *See, e.g., Aslan v.*
6 *Wamsley*, No. 2:25-cv-02698-JNW, 2026 WL 238675, at *2 (W.D. Wash. Jan. 29, 2026) (finding
7 that the detention of a petitioner previously released on OREC is governed by Section 1226(a))

8 III. LEGAL STANDARD

9 “The district courts of the United States ... are courts of limited jurisdiction. They possess
10 only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopach Servs.,*
11 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
12 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of*
13 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides
14 district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas
15 corpus, the burden is on the petitioner to prove that his or her custody is in violation of the
16 Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v.*
17 *Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

18 IV. ARGUMENT

19 Petitioners assert that their re-detention violates due process because they did not receive
20 written notice and a hearing prior to being detained. Pet., ¶¶ 170-173. However, there are no
21 such blanket requirements. Instead, “[d]ue process is flexible and calls for such procedural
22 protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).
23 Of the ten Petitioners, two different methods of discretionary release were implemented: (1)
24 parole pursuant to 8 U.S.C. § 1182(d)(5), and (2) OREC.

1 Petitioners Garrido, Ukbagabir, Sharp Perez, Mitiku, Mhret, Kurochkin, and Rahim⁴ were
 2 released on parole. Booth Decl., ¶¶ 59, 138, 152, 163; Lambert Decl., Ex. A (Garrido Interim
 3 Parole Notice); Ex. B (Ukbagabir Interim Parole Notice); Ex. C (Sharp Perez Parole Document);
 4 Ex. D (Mitiku Interim Parole Notice); Ex. E (Mhret Parole Document); Ex. F (Kurochkin Interim
 5 Parole Notice); Ex. G (Rahim Interim Parole Notice). As described above, parole automatically
 6 terminates when it expires, or the person departs the United States and no written notice is
 7 required. 8 C.F.R. § 212.5(e)(1). Here, it is arguable that most, if not all, Petitioners' parole
 8 terms had expired. Petitioners had notice of the expiration date when they were granted parole.
 9 In addition, Petitioner Rahim left the United States when he sought asylum in Canada on
 10 December 3, 2025. Lambert Decl., Ex. I, Form I-213. Thus, his parole automatically terminated
 11 without a notice of requirement for an additional, independent reason. Accordingly, the required
 12 process for these Petitioners has been met.

13 To analyze procedural due process, *Mathews* calls for an analysis of (1) "the private
 14 interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of
 15 such interest through the procedures used, and probable value, if any, of additional or substitute
 16 procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35. An analysis of the
 17 *Mathews* factors demonstrates that due process did not mandate a pre-detention hearings here.

18 As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty
 19 interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-
 20 8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021).

21 Turning to the second *Mathews* factor, "due process at least requires that (1) the
 22 government justify the basis for re-detention, as prescribed by the statute and its implementing
 23

24 ⁴ Petitioner Rahim was released on parole and placed on OREC. Lambert Decl., Ex. H (OREC). His OREC was
 revoked on January 5, 2026. Lambert Decl., Ex. J, OREC Revocation; Ex. K, OREC Cancellation Memo.

1 regulations,” and (2) Petitioner “be given the opportunity to be heard with respect to the
2 government’s basis for re-detention under the applicable statutory and regulatory framework at a
3 meaningful time and in a meaningful manner.” *Dieng v. Hermosillo*, No. 2:26-cv-00190-LK,
4 2026 WL 411857, at *8 (W.D. Wash. Feb. 13, 2026) (internal quotation marks and citation
5 omitted). As described above, Petitioners’ parole automatically terminated. Federal Respondents
6 recognize that district courts have found that noncitizens who continued to check in with ICE
7 after their parole expired require additional process than the regulations provide, but the
8 government respectfully disagrees with those opinions. Petitioners received the required process
9 when they were granted parole and knew of the dates of their parole expiration.

10 Furthermore, Canada returned Petitioner Rahim to the United States; his exit from the
11 United States automatically terminated his parole. Even if this Court were to find that termination
12 of parole due to expiration requires additional process, this Court should not find Petitioner
13 Rahim’s detention to have required a pre-deprivation hearing as the circumstances “could
14 reasonably be seen as presenting an urgency requiring detention before a hearing.” *Safi*, 2026
15 WL 445564, at *4.

16 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
17 test and procedural safeguards “must account for the heightened government interest in the
18 immigration detention context.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022).
19 Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz*
20 recognized that “the government clearly has a strong interest in preventing aliens from
21 ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208
22 (quoting *Demore v. Kim*, 538 U.S. 510, 518 (2003)). “This is especially true when it comes to
23 determining whether removable aliens must be released on bond during the pendency of removal
24 proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in

1 protecting immigration proceedings from unnecessary delay, especially considering Congress's
 2 purpose for enacting Section 1225(b) and require parole for release for those subject to such
 3 mandatory detention.

4 DHS released the remaining Petitioners Espinoza Palacios, Penzo Croechez, and
 5 Mounther on OREC. Booth Decl., ¶¶ 8, 98, 123; Lambert Decl., Ex. L (Penzo OREC); Ex. M
 6 (Mounther OREC). Their ORECs were revoked after they violated their conditions of release.
 7 Booth Decl., ¶¶ 10, 102-05, 107, 108, 110-13; 126, 127. The Supreme Court has held that “the
 8 Constitution requires some kind of hearing *before* the State deprives a person of liberty or
 9 property.” *Zinemon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in the original). But in the
 10 same opinion, the Court also recognized that a pre-deprivation hearing is not appropriate in every
 11 situation. *Id.*, at 128 (noting there may be “special case[s]” where a pre-deprivation hearing is
 12 impracticable). Petitioners’ violations of their conditions of release qualify them as special cases.

13 In *Martinez Hernandez v. Andrews*, the district court found that allegations of release
 14 violations that “are not obviously pretextual as in *E.A.T.-B*⁵” provided at least an arguable basis
 15 “that providing [the petitioner] with notice and a pre-deprivation hearing would have been
 16 impracticable and/or would have motivated his flight.” *Martinez Hernandez v. Andrews*, No.
 17 1:25-cv-01035, 2025 WL 2495767, at *11-12 (E.D. Cal. Aug. 28, 2025) (finding post-deprivation
 18 process adequate due to release violations). Federal Respondents acknowledge that this Court
 19 has found that due process requires a pre-deprivation hearing prior to OREC revocation. *Ledesma*
 20 *Gonzalez v. Bostock*, No. 2:25-cv-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct.
 21 7, 2025). In contrast, the district court in *Martinez Hernandez* found that any risk of erroneous
 22 deprivation could be reduced through a “prompt, post-deprivation process.” *Martinez Hernandez*,

23
 24 ⁵ *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

1 2025 WL 2495767, at *11-12. (collecting cases). While Federal Respondents do not concede that
2 any hearing before an immigration judge is required for OREC revocation, if this Court were to
3 grant habeas relief for Petitioners, prompt post-deprivation hearings would be appropriate.

4 **CONCLUSION**

5 ICE lawfully re-detained Petitioners. For the foregoing reasons, Federal Respondents
6 respectfully request that this Court deny the Petitioners' requests for release and deny the Petition.

7 DATED this 25th day of February, 2026.

8 Respectfully submitted,

9 s/ Michelle R. Lambert

10 MICHELLE R. LAMBERT, NYS #4666657

11 Assistant United States Attorney

12 United States Attorney's Office

13 Western District of Washington

14 1201 Pacific Ave., Ste. 700

15 Tacoma, WA 98402

16 Phone: (253) 428-3824

17 Fax: (253) 428-3826

18 Email: michelle.lambert@usdoj.gov

19 *Attorney for Federal Respondents*

20 *I certify that this memorandum contains 3,369*
21 *words, in compliance with the Local Civil Rules.*