

Magistrate Judge Michelle L. Peterson

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

ANGELO ARRIOJA BLANCO, *et al.*,

Petitioners,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00493-MLP

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
March 2, 2026.

I. INTRODUCTION

Federal Respondents respectfully submit this Return Memorandum in response to Petitioners' Petition for Writ of Habeas Corpus (Dkt. 1). Federal Respondents deny that Petitioners' custody violates the Constitution, laws, or treaties of the United States and put Petitioners to their proof. Pursuant to the Court's Order (Dkt. 7), Federal Respondents provide the relevant factual background drawn from the administrative records in Petitioners' immigration proceedings, as well as the governing statutory and regulatory framework.

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Federal Respondents recognize that courts in the Western District of Washington have, in
2 certain recent cases, evaluated similar detention and re-detention circumstances under the
3 procedural framework set forth in *Mathews v. Eldridge* and have concluded that additional
4 procedural protections were required in those matters. However, Federal Respondents
5 respectfully submit that the constitutional inquiry under *Mathews* is context-specific and fact-
6 dependent. When the three *Mathews* factors are applied to the particular circumstances of these
7 Petitioners—as set forth in the Declaration of Rita Soraghan and the accompanying record—the
8 balance weighs in favor of concluding that no pre-deprivation hearing was constitutionally
9 required and that the Petition should be denied.

10 In advancing this position, Federal Respondents acknowledge that Courts in this district
11 differ in their prior analyses, while preserving the Government’s consistent view regarding the
12 scope of detention authority under 8 U.S.C. § 1225(b) and the discretionary nature of release and
13 revocation determinations under the governing regulations. The question presented is whether
14 due process, as applied to these Petitioners and these circumstances, mandates the relief sought.
15 Federal Respondents respectfully submit that it does not.

16 This claim fails to look at each noncitizen’s re-detention independently, as procedural due
17 process is flexible and should be individually suited to the circumstances at hand. While Federal
18 Respondents do not concede that hearings were required for any of the re-detentions here, due
19 process does not mandate that all re-detentions require a pre-deprivation hearing. *See Safi v.*
20 *Noem*, No. 2:26-cv-00308-TLF, 2026 WL 445564, at *4 (W.D. Wash. Feb. 17, 2026) (finding
21 that a prompt post-deprivation hearing would be appropriate based on the individual facts of the
22 case).

23 Petitioners further ask this Court to “permanently enjoin their re-detention during the
24 pendency of their removal proceeding absent written notice and a hearing prior to re-detention

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

10 For Petitioners’ factual backgrounds, Federal Respondents respectfully refer this Court to
11 the Declaration of Rita Soraghan (“Soraghan Decl.”), submitted herewith.

12 II. PROCEDURAL BACKGROUND DETENTION AUTHORITY

13 A. 8 U.S.C. § 1225(b)

14 Petitioner is an arriving alien who is subject to mandatory detention pursuant to 8 U.S.C.
15 § 1225(b). *See Jennings v. Rodriguez*, 583 U.S. 281 (2018). Applicants for admission fall into
16 one of two categories. Section 1225(b)(1) covers noncitizens initially determined to be
17 inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other
18 aliens designated by the Attorney General in his or her discretion. Separately, Section 1225(b)(2)
19 serves as a catchall provision that applies to all applicants for admission not covered by
20 Section 1225(b)(1) (with specific exceptions not relevant here). *Id.* at 287.

21 Congress has determined that all aliens subject to Section 1225(b) are subject to
22 mandatory detention regardless of whether an alien falls under Section 1225(b)(1) or (b)(2).
23 Aliens detained under Section 1225(b) may be subject to parole by the Attorney General or
24 Department of Homeland Security (“DHS”), and that is not an issue that the Immigration Judge

1 has authority to consider. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a).

2 In contrast to mandatory detention under 8 U.S.C. § 1225(b), 8 U.S.C. § 1226(a) applies
3 to aliens in removal proceedings who are not subject to mandatory detention and grants the
4 Secretary discretionary authority to detain the alien or release him on bond or conditional parole,
5 subject to a custody redetermination hearing before an immigration judge. 8 C.F.R.
6 §§ 236.1(d)(1), 1003.19(a). At such hearing, the alien bears the burden to show he is not a flight
7 risk or danger to the community. 8 C.F.R. § 236.1(c)(8); *In re Guerra*, 24 I. & N. Dec. 37, 40
8 (B.I.A. 2006).

9 **B. Revocation of Discretionary Release from Detention**

10 8 C.F.R. § 1236.1(c)(8) provides that “[a]ny officer authorized to issue a warrant of arrest
11 may, in the officer’s discretion, release an alien . . . provided that the alien must demonstrate to
12 the satisfaction of the officer that such release would not pose a danger to property or persons,
13 and that the alien is likely to appear for any future proceeding.” Section 236.1(c)(9) provides for
14 the revocation of such release: “When an alien who, having been arrested and taken into custody,
15 has been released, such release may be revoked at any time in the discretion of the district director,
16 acting district director, deputy district director, assistant district director for investigations,
17 assistant district director for detention and deportation, or officer in charge (except foreign), in
18 which event the alien may be taken into physical custody and detained.”

19 Federal Respondents acknowledge that district courts have determined that the revocation
20 of an order of recognizance (“OREC”) requires a pre-detention hearing to determine if that
21 noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-
22 cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions
23 erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a
24 determination set forth in Section (c)(8) into the discretionary determination of revoking an OSUP

1 in Section (c)(9)). Both Sections provide that the decisions to release or revoke are discretionary.
2 But Section 1231(c)(8) includes language requiring the officer to decide that the alien “would not
3 pose a danger to property or persons, and that the alien is likely to appear for any future
4 proceeding.” In contrast, Section 1231(c)(9) does not require such a determination and
5 specifically provides that “release may be revoked at any time.”

6 III. LEGAL STANDARD

7 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
8 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
9 *Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
10 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
11 day.” *DHS v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides
12 district courts with jurisdiction to hear federal habeas petitions.

13 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
14 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
15 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

16 IV. ARGUMENT

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

18 Petitioners are applicants for admission subject to mandatory detention under 8 U.S.C.
19 § 1225(b). *See* Soraghan Decl. The Supreme Court has held that this provision does not contain
20 any statutory right to a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018) (no
21 implied bond hearing under 8 U.S.C. § 1225(b)); *see also DHS v. Thuraissigiam*, 591 U.S. 103,
22 115 (2020).

23 Petitioners Arrioja Blanco, Avariano Marrero, Dinesh Dinesh, and Faya Falla are subject
24 to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) as they have not been admitted to the

1 United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir.
2 Feb. 6, 2026) (affirming the government’s position that aliens who have not been admitted or are
3 not entitled to be admitted to the United States are “applicants for admission” who are subject to
4 mandatory detention under Section 1225(b)(2)(A)). Federal Respondents acknowledge that courts
5 in this district have reached a different conclusion concerning the scope of Section 1225(b)(2)
6 detention. *A.B.J.C. v. Hermosillo, et al.*, No. 2:26-CV-00185-JNW, 2026 WL 497097, at *3
7 (W.D. Wash. Feb. 23, 2026). However, the issue of the scope of Section 1225(b)(2)(A) is not
8 pertinent to at least one Petitioner—Angel Tenias, who is an arriving alien and clearly subject to
9 mandatory detention under Section 1225(b)(1). Thus, Petitioner Tenias is subject to mandatory
10 detention under 8 U.S.C. § 1225(b)(1).

11 While certain Petitioners were released on OREC rather than parole, this does not change
12 that they were subject to mandatory detention. On July 8, 2025, DHS issued a memorandum to
13 ICE employees explaining that DHS had revisited its legal position on detention and release
14 authorities. *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1308 (W.D. Wash. 2025). The
15 memorandum defined an “applicant for admission” as “an alien present in the United States who
16 has not been admitted or who arrives in the United States, whether or not at a designated port of
17 arrival. *Id.* (citing 8 U.S.C. § 1225(a)(1)). Prior to July 2025, DHS allowed discretionary releases
18 of aliens that fit the definition of an applicant for admission pursuant to 8 C.F.R. § 1236.1(c)(8),
19 instead of only utilizing parole, like what occurred here.

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

1 true, the government's past practice has little to do with the statute's text. The text says what it
2 says, regardless of the decisions of prior Administrations. Years of consistent practice cannot
3 vindicate an interpretation that is inconsistent with a statute's plain text.”).

4 While Federal Respondents acknowledge that Courts in this district have recently found
5 that a person released on OREC to not be detained under Section 1225(b), at least one Petitioner,
6 Tenias, is an arriving alien. *A.B.J.C.*, 2026 WL 497097.

7
8 **B. Petitioners’ re-detention did not require pre-deprivation hearings to comply with
due process**

9 A pre-deprivation hearing to determine whether each Petitioner was a flight risk or
10 dangerous was not required prior to Petitioners’ individual arrests. “Due process is flexible and
11 calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*,
12 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) “the private interest that will be
13 affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through
14 the procedures used, and probable value, if any, of additional or substitute procedural safeguards,”
15 and (3) the Government’s interest. *Id.* at 334-35.

16 Federal Respondents recognize that courts in this district have found that the revocation
17 of OREC (or parole) requires a pre-deprivation hearing to determine if that noncitizen is a flight
18 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
19 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130,
20 1134-37 (W.D. Wash. 2025).

21 Courts in district have also recognized that certain factual circumstances do not require a
22 pre-detention hearing. *Garcia Gabriel v. Hermosillo*, No. 2:25-CV-02594-DGE-GJL, 2026 WL
23 194233, at *6 (W.D. Wash. Jan. 26, 2026); *Cotoc Yac De Yac v. Hermosillo*, No. 2:25-CV-02593-
24 DGE-TLF, 2026 WL 124334, at *5 (W.D. Wash. Jan. 16, 2026). In weighing the *Mathews* factors

1 as compared to the facts presented in the Declaration of Rita Soraghan, Federal Respondents
2 respectfully submit the factual circumstances presented in the case of these Petitioners do not
3 necessitate pre-detention hearings. *See generally* Soraghan Declaration.

4 **V. CONCLUSION**

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

7 Dated this 25th day of February, 2026.

8 Respectfully submitted,

9 *s/ Alexandria K. Morris*

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