

District Judge John H. Chun

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

HASAN OMER HUSEN,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:26-cv-00498-JHC

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
March 3, 2026.

I. INTRODUCTION

This Court should deny Petitioner's Petition for a Writ of Habeas Corpus. Dkt. 1, (Petition or Pet.). Petitioner is lawfully detained by U.S. Immigration and Customs Enforcement (ICE) pursuant to 8 U.S.C. § 1225(b)(2) while his removal proceedings remain pending before the immigration court. Petitioner is subject to mandatory detention and is not eligible for a custody redetermination hearing. Petitioner's detention is authorized by statute, and he has received all process due under the law. Petitioner's assertions of violations of the Fifth Amendment Due Process Clause and the Administrative Procedure Act lack merit.

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

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner Hasan Omer Husen

Petitioner is a native and citizen of Ethiopia who is currently in the custody ICE at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. Declaration of Deportation Officer Gabriel Arambula III, (Arambula Decl.). He arrived in the United States at or near San Ysidro, California, without inspection or admission on or about April 13, 2023. Arambula Decl., ¶¶ 4-5; Declaration of Lawrence Van Daley, (Van Daley Decl.,) Exhibit (Ex.) 1, Notice to Appear. Shortly after his arrival, he was served with a Notice to Appear (NTA) charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i). On April 19, 2023, Petitioner was released from custody on an order of release on his own recognizance (OREC). *Id.*; Van Daley Decl., Ex. 2, OREC.

On June 2, 2023, Petitioner filed a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture with the Seattle Immigration Court. Arambula Decl., ¶ 6. On March 7, 2025, Petitioner appeared for his master hearing at the Seattle Immigration Court and admitted allegations and conceded sole charge of removability in the NTA. As a result, the immigration judge scheduled an individual hearing on the merit for March 3, 2028, to adjudicate Petitioner's I-589 application. Arambula Decl., ¶ 7.

On December 22, 2025, ICE Enforcement and Removal Officers (ERO) encountered Petitioner during a targeted interior enforcement operation in the Seattle area. Arambula Decl., ¶ 8; Van Daley Decl., Ex. 3, Form I-213. Officers observed Petitioner getting into a vehicle and ran a registration query on the vehicle's license plates, which returned an immigration violation. *See Id.*; Van Daley Decl., Ex. 3. Based on that determination, an administrative arrest warrant was issued at that time. *Id.*; Van Daley Decl., Ex. 4, Warrant, Ex. 5 Custody Determination. Officers stopped the vehicle, arrested Petitioner, and transported him to Seattle ERO for processing. *Id.* Later the same day, he was transferred to the Northwest ICE Processing Center (NWIPC) in

1 Tacoma. Arambula Decl., ¶ 9; Van Daley Decl., Ex. 6, Form I-830. Petitioner received a Notice
2 of Cancellation of his OREC on December 22, 2025. *Id.*; Van Daley Decl., Ex. 7, Release
3 Revocation.

4 On January 27, 2026, Petitioner appeared before the Tacoma Immigration Court for a full
5 merits hearing on his Form I-589 application. Arambula Decl., ¶ 10. On February 16, 2026, the
6 Immigration Judge issued a written decision denying all applications for relief and ordering
7 Petitioner removed to Ethiopia. *Id.*; Van Daley Decl., Ex. 8, IJ Order. The immigration judge
8 reserved the appeal rights for Petitioner. Arambula Decl., ¶ 10. As of February 25, 2026, the 30-
9 day period for filing a notice of appeal has not expired, no appeal has been perfected, and the
10 removal order is therefore not yet administratively final. Arambula Decl., ¶ 11. Petitioner remains
11 in ICE custody at NWIPC in Tacoma, Washington.

12 **B. Detention Authority**

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

14 Petitioner's detention is authorized and required by 8 U.S.C. § 1225(b), which states that
15 "in the case of an alien who is an applicant for admission, if the examining immigration officer
16 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
17 admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. §
18 1225(b)(2)(A). Because Petitioner entered without inspection and has never been admitted or
19 paroled, he remains an "applicant for admission" under the plain statutory definition in 8 U.S.C. §
20 1225(a)(1): "An alien present in the United States who has not been admitted or who arrives in the
21 United States . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C.
22 § 1225(a)(1); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). The statute mandates
23 detention for the duration of removal proceedings under section 240 (8 U.S.C. § 1229a) unless the
24 alien demonstrates he is "clearly and beyond a doubt entitled to be admitted," a showing Petitioner

1 has never made and which the Immigration Judge expressly rejected on February 16, 2026.
2 Detention under 8 U.S.C. § 1225(b)(2)(A) continues until proceedings conclude, including through
3 any appeal. See 8 U.S.C. § 1225(b)(2)(C) (detention continues “until a final determination of
4 admissibility” or removal).

5 The Supreme Court has confirmed that 8 U.S.C. § 1225(b) imposes mandatory detention
6 without bond hearings for applicants for admission throughout removal proceedings. *Jennings v.*
7 *Rodriguez*, 583 U.S. 281, 298–300 (2018) (holding that sections 1225(b)(1) and (b)(2) “mandate
8 detention” of certain aliens “until the completion of removal proceedings” and contain “no
9 provision for bond hearings”). The Court distinguished 8 U.S.C. § 1225(b) detention (applicable
10 to aliens “seeking admission”) from discretionary detention under 8 U.S.C. § 1226(a) (applicable
11 to certain “aliens already in the country”). *Id.* at 288.

12 The Fifth Circuit recently addressed the precise issue presented here of whether an alien
13 who entered without inspection years earlier and was later arrested in the interior remains subject
14 to mandatory detention under 8 U.S.C. § 1225(b). In a thorough textual analysis, the court held
15 that such aliens are “deemed . . . applicants for admission” under 8 U.S.C. § 1225(a)(1) and are
16 “presently seeking admission” while removal proceedings remain pending. *Buenrostro-Mendez v.*
17 *Bondi*, 25-20496, 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2026). The court explained that “being
18 an ‘applicant for admission’ is not a condition independent from ‘seeking admission,’” and that
19 “when a person applies for something, they are necessarily seeking it.” *Id.* at * 5. The court rejected
20 the argument that 8 U.S.C. § 1226(a) displaces section 1225(b), noting that the provisions overlap
21 for unadmitted aliens and that section 1225(b)’s mandatory command controls. *Id.* This Court
22 should find the Fifth Circuit’s persuasive reasoning highly instructive, as it rests on the plain text
23 of the statute and harmonizes with *Jennings*.

1 This habeas concerns pre-final-order detention. The February 16, 2026, removal order is
 2 not administratively final because the 30-day time for appeal has not expired. *See* 8 U.S.C. §
 3 1101(a)(47)(B); 8 C.F.R. § 1241.1(a)–(c). The removal period under 8 U.S.C. § 1231(a) therefore
 4 has not begun. Petitioner’s citations to 8 C.F.R. § 241.13, which governs custody review only after
 5 a final order and expiration of the removal period, are wholly inapplicable. *See* 8 C.F.R. §
 6 241.13(a).

7 **III. LEGAL STANDARD**

8 This Court has jurisdiction to review Petitioner's habeas claims under 28 U.S.C. § 2241, as
 9 habeas jurisdiction extends to challenges to immigration detention. *Zadvydas v. Davis*, 533 U.S.
 10 678, 688 (2001). However, the Petition fails on the merits. Petitioner's detention is lawful, and his
 11 claims of constitutional and statutory violations are without merit.

12 **IV. ARGUMENT**

13 **A. Petitioner’s Detention Comports With Due Process**

14 Section 1225(b) mandates detention for inadmissible aliens like Petitioner, who entered
 15 without inspection and is charged under 8 U.S.C. § 1182(a)(6)(A)(i). *See* 8 U.S.C. § 1225(b)(2)(A)
 16 (requiring detention for applicants for admission not clearly entitled to entry pending 8 U.S.C. §
 17 1229a proceedings). Unlike 8 U.S.C. § 1226(a), which provides discretionary detention and bond
 18 eligibility for certain aliens in removal proceedings, 8 U.S.C. § 1225(b) imposes mandatory
 19 detention without a statutory right to bond. *Jennings*, 583 U.S. at 293-94; *see also Dep’t of*
 20 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 115 (2020).

21 Petitioner’s re-detention on December 22, 2025, due to his immigration violation, properly
 22 falls under 8 U.S.C. § 1225(b) as an enforcement action against an inadmissible alien. OREC
 23 revocation was discretionary under 8 C.F.R. § 236.1(c)(9) and does not require evidence of a
 24 specific violation; it may occur at any time, including when an alien is encountered during a lawful

1 operation. *See* 8 C.F.R. § 236.1(c)(9). No bond hearing is required post-revocation under 8 U.S.C.
2 § 1225(b). Courts in this district confirm that 8 U.S.C. § 1225(b) detainees are not entitled to
3 immigration bond hearings. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1110 (W.D. Wash.
4 2019) (distinguishing 8 U.S.C. § 1225(b) from bond-eligible provisions).

5 Federal Respondents acknowledge that this Court has recently granted habeas relief in
6 several re-detention cases involving procedural due process claims under the Fifth Amendment.
7 *See Singh v. Bondi*, No. 2:26-cv-00197-JHC, Dkt. 13 (W.D. Wash. Feb. 10, 2026) (granting
8 petition and ordering immediate release on prior conditions after finding due process violation
9 where petitioner was re-detained without adequate notice or opportunity to contest alleged
10 violations before a neutral decisionmaker, applying *Mathews v. Eldridge*, 424 U.S. 319 (1976));
11 *Tzafir v. Bondi*, 2:25-cv-02067-JHC-SKV, 2026 WL 74088, at *5 (W.D. Wash. Jan. 9, 2026)
12 (granting habeas and release after re-detention from long-term supervision with only conclusory
13 notice of “changed circumstances”); *Kumar v. Wamsley*, 2:25-cv-01772-JHC-BAT, 2025 WL
14 2677089 (W.D. Wash. Sept. 17, 2025) (recognizing strong liberty interest against re-detention and
15 granting TRO relief in analogous challenges, requiring Government to prove violations and risk
16 by clear and convincing evidence before neutral decisionmaker). However, due process requires
17 an individualized review of the circumstances at hand. *Mathews*, 424 U.S. at 334.

18 Applying the *Mathews v. Eldridge* factors to the facts of this case confirms that the
19 procedures afforded Petitioner satisfy due process and that no additional safeguards are required.
20 To analyze procedural due process, *Mathews* calls for an analysis of (1) “the private interest that
21 will be affected by the official action,” (2) “the risk of an erroneous deprivation of such interest
22 through the procedures used, and probable value, if any, of additional or substitute procedural
23 safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

1 First, Petitioner's private interest in liberty is significant, but it is substantially attenuated
2 here. Unlike the long-term supervision or Order of Supervision contexts in *Singh*, *Tzafir*, and
3 *Kumar* (where petitioners had been released for several years without incident), Petitioner's initial
4 release on recognizance lasted only from April 19, 2023, until his rearrest on December 22, 2025,
5 and was always subject to revocation upon DHS discretion. Moreover, detention under the
6 mandatory command of 8 U.S.C. § 1225(b)(2) is of short duration to date (approximately two
7 months since rearrest) and is tied directly to ongoing removal proceedings that have already
8 advanced to a full merits hearing and written decision denying relief. *See* Van Daley Decl., Ex. 8.

9 Second, the risk of erroneous deprivation through the existing procedures is minimal, and
10 the probable value of additional or substitute safeguards is low. Petitioner was arrested pursuant
11 to a valid administrative warrant issued only after officers personally observed him entering a
12 vehicle during a targeted enforcement operation and confirmed his immigration violation via real-
13 time registration query. Van Daley Decl., Ex. 3. This is not a summary revocation based on
14 conclusory "changed circumstances" allegations. Petitioner then received immediate notice of the
15 OREC cancellation, a full merits hearing on his asylum claim just over a month later (January 27,
16 2026), and a detailed written decision (February 16, 2026). Arambula Decl., ¶¶ 9-11. The
17 Immigration Judge expressly found Petitioner not entitled to any relief or admission, directly
18 satisfying the statutory predicate for continued detention. Additional pre- or immediate post-arrest
19 process before a neutral decisionmaker would add little probative value and is not required under
20 the statute or Constitution. *See Jennings*, 583 U.S. at 315–16 (existing statutory and regulatory
21 scheme provides all process due for 8 U.S.C. § 1225(b) detainees).

22 Third, the Government's interest is compelling. The mandatory detention of applicants for
23 admission under 8 U.S.C. § 1225(b)(2) serves the core sovereign interest in controlling the border
24 and ensuring that unadmitted aliens do not remain at large while removal proceedings are pending.

1 Requiring additional hearings in every case of administrative re-detention would impose
2 substantial fiscal and administrative burdens on Immigration and Customs Enforcement Officers
3 and the immigration courts while undermining Congress's clear command of mandatory detention.
4 *See Demore*, 538 U.S. at 521–23 (recognizing the Government's strong interest in efficient
5 removal proceedings).

6 Balancing the three *Mathews* factors, the procedures used here, such as an administrative
7 warrant, immediate notice, and prompt merits hearing, satisfy due process. The circumstances
8 differ materially from those in this Court's recent grants of relief, which arose in long-term
9 supervision revocation contexts rather than mandatory pre-final-order detention of an unadmitted
10 applicant for admission whose case has already received full merits adjudication. No Fifth
11 Amendment violation occurred.

12 **B. Petitioner Detained Under 8 U.S.C. § 1225(b)(2) as an Applicant for Admission**

13 Petitioner falls within the definition of an "applicant for admission" under 8 U.S.C. §
14 1225(a)(1). As an alien who entered the United States without inspection near San Ysidro
15 California, on April 13, 2023, he was never lawfully admitted. *See* 8 U.S.C. § 1225(a)(1) (any
16 alien present without admission is an applicant for admission); *Buenrostro-Mendez*, 2026 WL
17 323330, at *2; *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025). His inadmissibility under Section
18 1182(a)(6)(A)(i) for presence without admission further confirms this status. *See, Torres v. Barr*,
19 976 F.3d 918, 924 (9th Cir. 2020). Petitioner's duration of unlawful presence in the United States
20 does not alter this classification; the statute imposes no temporal limit on applicant status for those
21 never admitted. *See Buenrostro-Mendez v. Bondi*, 2026 WL 323330 *15-16.

22 Moreover, Petitioner's applications for asylum, withholding of removal, and Convention
23 against Torture (CAT) protection underscore his status as an applicant for admission. By seeking
24 these forms of relief, Petitioner is explicitly requesting permission to remain in the United States,

1 which constitutes an application for admission under the Immigration and Nationality Act (INA).
2 *See* 8 U.S.C. § 1158(a)(1); *see also* *Thuraissigiam*, 591 U.S. at 112. Asylum, if granted, leads to
3 lawful permanent residence and eventual citizenship, effectively granting admission. 8 U.S.C. §
4 1159(b). Withholding of removal and CAT protection, while not conferring permanent status,
5 similarly allow the alien to remain in the United States, reinforcing the pursuit of admission-like
6 relief. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 428-29 (1987). Petitioner's filings thus affirm
7 his intent to seek admission, subjecting him to 8 U.S.C. § 1225(b)'s mandatory detention regime
8 pending adjudication.

9 Petitioner's initial OREC release was a temporary conditional release, which does not
10 constitute admission and may be revoked when no longer warranted. *See also* 8 C.F.R. § 236.1;
11 *Matter of Q. Li*, 29 I&N Dec. at 6. This regulatory framework authorizes Petitioner's current
12 detention.

13 Federal Respondents acknowledge that courts in this District have reached the opposite
14 result on the legal issues presented in *Buenrostro-Mendez*, specifically whether detention of certain
15 noncitizens is governed by Section 1226(a) or 1225(b). *See Lal v. Noem*, 2:26-cv-00247-KKE,
16 2026 WL 369378, at *2 (W.D. Wash. Feb. 10, 2026) (noting the *Buenrostro-Mendez* a not binding
17 and inconsistent with the Court's view of the statutory text and relevant Ninth Circuit and Supreme
18 Court authority interpreting it); *see also, Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC,
19 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). Federal Respondents further acknowledge that
20 if this Court applies the same analysis as in *Lal*, that the Court will likely disagree with Federal
21 Respondents' position that Section 1225(b) applies here as the facts are similar to the facts in *Lal*.

22 **C. Petitioner Received All Process Due Under the Fifth Amendment**

23 Mandatory detention under 8 U.S.C. § 1225(b)(2) during removal proceedings satisfies
24 Fifth Amendment procedural due process. *Jennings*, 583 U.S. at 315–16 (the statutory and

regulatory scheme provides all process that is due); *Demore*, 538 U.S. at 523 (detention during proceedings does not violate due process). Petitioner received full notice of the charges in the NTA served shortly after entry, a complete merits hearing on January 27, 2026, before an impartial Immigration Judge, and a detailed written decision on February 16, 2026, explaining the denial of all relief. He retains the right to appeal the removal order to the BIA.

The December 22, 2025, administrative arrest was supported by a valid warrant issued after confirmation of an immigration violation, satisfying constitutional standards for civil immigration enforcement. *Abel v. United States*, 362 U.S. 217, 236–37 (1960). No pre-arrest judicial probable-cause hearing is required in this civil context. Petitioner’s two-month detention since rearrest, following a full merits hearing on the underlying case, does not render the process constitutionally inadequate, particularly where the Supreme Court has upheld far longer periods of mandatory detention during removal proceedings. No additional procedural protections are required beyond what the Immigration and Nationality Act and regulations already afford.

V. CONCLUSION

For the foregoing reasons, this court should deny the relief sought here.

DATED this 26th day of February, 2026.

Respectfully submitted,

s/ Lawrence Van Daley

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I certify that this memorandum contains 2,785 words, in compliance with the Local Civil Rules.