

District Judge Thomas S. Zilly

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

HECTOR CACERES BANEGAS, *et al.*,

Petitioners,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00499-TSZ

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
March 3, 2026.

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains the three 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., ¶¶ 66-68. 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 Respondent and is not represented by the U.S. Attorney's Office.

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.*, ¶ 5. 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 Paul Correa (“Correa Decl.”), 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 Am. Immigr. Laws. Ass’n v. Reno*, 199 F.3d
23 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”

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 and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). This discretionary
2 release is done with the issuance of an order of release on recognizance (“OREC”) issued by
3 DHS.

4 A noncitizen may also request a custody redetermination (i.e., a bond hearing) by an
5 immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a);
6 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination hearing, the
7 immigration judge may continue detention or release the noncitizen on bond or conditional parole.
8 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in
9 deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA
10 2006) (listing nine factors for immigration judges to consider).

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

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,
23 DHS’s prior practice of OREC releases for applicants for admission does not mean that those
24 aliens are no longer applicants for admissions. *Buenrostro-Mendez*, 2026 WL 323330, at *8

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

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

9 **III. LEGAL STANDARD**

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

19 **IV. ARGUMENT**

20 Petitioners assert that their re-detention violates due process because they did not receive
21 written notice and a hearing prior to being detained. Pet., ¶¶ 66-68. However, there are no such
22 blanket requirements. Instead, “[d]ue process is flexible and calls for such procedural protections
23 as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Of the
24 three Petitioners, two Petitioners (Iraheta and Jimenez-Sandoval) were released on OREC and

1 one Petitioner (Banegas) was released on bond by an immigration judge. Correa Decl. ¶¶ 7, 20,
2 32.

3 A pre-deprivation hearing to determine whether each Petitioner was a flight risk or
4 dangerous was not required prior to Petitioners' individual arrests. "Due process is flexible and
5 calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*,
6 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be
7 affected by the official action," (2) "the risk of an erroneous deprivation of such interest through
8 the procedures used, and probable value, if any, of additional or substitute procedural safeguards,"
9 and (3) the Government's interest. *Id.* at 334-35.

10 Federal Respondents recognize that courts in this district have found that the revocation
11 of OREC (or parole) requires a pre-deprivation hearing to determine if that noncitizen is a flight
12 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
13 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130 (W.D.
14 Wash. 2025).

15 Courts in this district have also recognized that certain factual circumstances do not
16 require a pre-detention hearing. *Garcia Gabriel v. Hermosillo*, No. 2:25-CV-02594-DGE-GJL,
17 2026 WL 194233, at *6 (W.D. Wash. Jan. 26, 2026); *Cotoc Yac De Yac v. Hermosillo*, No. 2:25-
18 CV-02593-DGE-TLF, 2026 WL 124334, at *5 (W.D. Wash. Jan. 16, 2026). In weighing the
19 *Mathews* factors as compared to the facts presented in the Declaration of Paul Correa, Federal
20 Respondents respectfully submit the factual circumstances presented in the case of these
21 Petitioners do not necessitate pre-detention hearings. *See generally* Correa Decl.

22 V. CONCLUSION

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

1 Dated this 26th day of February, 2026.

2 Respectfully submitted,

3 s/ Alixandria K. Morris

4 ALIXANDRIA K. MORRIS, TX No. 24095373

5 Assistant United States Attorney

6 United States Attorney's Office

7 Western District of Washington

8 700 Stewart Street, Suite 5220

9 Seattle, Washington 98101

10 Phone: 206-553-7970

11 Fax: 206-553-4067

12 Email: alixandria.morris@usdoj.gov

13 *Attorney for Federal Respondents*

14 I certify that this memorandum contains 2,633
15 words, in compliance with the Local Civil Rules.