THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

LORAINE ELIZABETH CETINO GARCIA,

Petitioner,

v.

Kristi NOEM, Secretary of U.S. Department of Homeland Security;
Pamela BONDI, United States Attorney General;
Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
Laura HERMOSILLO, Acting Seattle Field Office Director, Immigration and Customs Enforcement;
Bruce SCOTT, Warden, Northwest ICE Processing Center;

Respondents.

Case No. 2:26-cv-00556-LK

PETITIONER'S TRAVERSE IN RESPONSE TO FEDERAL RESPONDENTS' RETURN

I. INTRODUCTION

Federal Respondents' Return does not meaningfully dispute the operative facts. Respondents concede Ms. Cetino Garcia was released from ICE custody on an Order of Release on Recognizance on November 24, 2005. Ms. Cetino Garcia was ordered removed in absentia in February 2006. She re-entered the United States in June 2019 and was again released on OREC

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on June 19, 2019, despite a prior removal order in 2006. Since then, Ms. Cetino Garcia has lived in the community for almost seven years, and was re-detained on February 06, 2026.

Respondents further concede that the Petitioner adhered to the reporting requirements of her release and attended scheduled check-ins with ICE officials. Respondents also concede that she has no prior criminal convictions in the United States or any other country. Respondents concede this re-detention occurred without advance written notice, without a hearing, and without any prior individualized determination by a neutral decisionmaker regarding flight risk or danger

Respondents contend that Petitioner's re-detention is justified because she allegedly remains subject to mandatory detention under INA §1225(b), relying in part on the existence of a prior removal order from 2006. That explanation only underscores the procedural defect. The 2006 removal order was not a newly arising fact created on February 6, 2026; it was a preexisting government record. Regardless of when DHS chose to rely upon that record, the Government had already released Petitioner into the community in 2019 and permitted her to live at liberty for years. The Constitution therefore required procedural safeguards before the Government could revoke that liberty and return her to detention.

The issue before this Court is not whether ICE believes the previous removal order was in effect. The issue is whether the Government may revoke a previously granted liberty interest and incarcerate a person without first providing the procedural protections required by the Fifth Amendment. It may not. The Government's position would allow ICE to place an individual on supervised release for years, invite her to report for routine check-ins, and then incarcerate her without warning or hearing based solely on information already in its possession. The Due Process Clause does not permit such arbitrary deprivation of liberty.

Rather than contest these facts, Respondents attempt to justify this deprivation of liberty by recharacterizing Ms. Cetino Garcia's re-detention as "mandatory" under INA § 1225(b) and by arguing that due process did not require any pre-deprivation safeguards. As applied to Ms. Cetino

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Garcia, these arguments are legally incorrect, internally inconsistent with Respondents' own actions, and foreclosed by controlling precedent from this Court.

Because ICE revoked Ms. Cetino Garcia's established liberty interest without the most basic procedural protections required by the Fifth Amendment, the Petition should be granted and Ms. Cetino Garcia ordered immediate release.

II. RESPONDENTS' § 1225(b) "MANDATORY DETENTION" THEORY FAILS AS APPLIED TO LORAINE ELIZABETH CETINO GARCIA

Respondents' central argument fails because, even assuming they may now characterize Petitioner's custody under 8 U.S.C. § 1225(b), that statutory label does not extinguish the Fifth Amendment's independent procedural due process requirement before the Government revokes a previously granted release and physically re-incarcerates her.

Critically, the constitutional violation in this case occurred at the moment DHS revoked Petitioner's previously granted release and returned her to physical custody without advance notice or a neutral hearing. That deprivation of liberty occurred before any court had an opportunity to review the Government's statutory detention theory. Because the Due Process Clause regulates the procedures the Government must follow before it may deprive a person of liberty, Respondents cannot avoid constitutional scrutiny simply by invoking §1225(b) after the fact.

A. Ms. Cetino Garcia Was Not Re-Detained Pursuant to § 1225(b)

DHS expressly exercised discretionary custody authority under INA § 236 when it released Ms. Cetino Garcia on an Order of Release on Recognizance (Form I-220A). See Benjamin Decl. The I-220A expressly states it was issued "in accordance with section 236 of the Immigration and Nationality Act."

Ms. Cetino Garcia was placed into removal proceedings under INA § 240 upon issuance of her Notice to Appear and thereafter released pursuant to § 236 authority.

The Government's own documents demonstrate that DHS made an express custody determination under INA § 236 when it released Ms. Cetino Garcia on Form I-220A which states

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that Petitioner was released "in accordance with section 236 of the Immigration and Nationality Act." Having exercised discretionary custody authority under § 1226(a), DHS cannot retroactively reclassify Petitioner's detention as arising under § 1225(b) more than a year later absent a new statutory trigger or new entry event.

Respondents' own declaration confirms that ICE revoked Petitioner's existing release and issued a warrant of arrest at the time of her check-in, demonstrating that the agency treated this event as a discretionary custody revocation rather than a new inspection or admission determination under §1225. Benjamin Decl. ¶14.

Critically, Respondents' own declaration confirms that Petitioner was already known to ICE and had been reporting to the agency for years under the Alternatives to Detention program before her re-detention. The issuance of a new Notice to Appear at the time of arrest therefore did not represent a new entry event or inspection determination under §1225, but rather followed ICE's discretionary decision to revoke an existing release order. Nothing in the INA permits the Government to manufacture mandatory detention by issuing a new charging document at the moment it decides to revoke an existing order of release. The Government cannot transform a discretionary revocation of supervision into "mandatory detention" simply by issuing a new charging document after the fact.

8 U.S.C. § 1225(b) applies to "applicants for admission" to the United States, who are defined as an "alien present in the United States who has not been admitted or who arrives in the United States . . . ." 8 U.S.C. § 1225(a)(1).

Having made a § 236 custody determination and released Petitioner into the community, DHS cannot retroactively reclassify her as subject to § 1225(b) absent a new statutory trigger or new entry event. The statutory scheme does not permit "reversion" from § 236 custody authority back to § 1225(b) after release.

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Section 1225 governs initial inspection and admission determinations. Once a noncitizen is processed, placed into § 240 proceedings, and released under § 236, detention authority flows from § 1226—not § 1225. See 8 U.S.C. §§ 1225, 1226.

Allowing DHS to invoke § 1225(b) years after release would render § 1226 meaningless and permit indefinite executive reclassification of custody authority without judicial oversight.

Ms. Cetino Garcia's re-detention did not occur at the border, during initial inspection, or in the context of expedited removal. Instead, ICE released Ms. Cetino Garcia on an Order of Recognizance ("OREC") in June 2019 pursuant to 8 U.S.C. § 1226- "In accordance with section 236 of the Immigration and Nationality Act [("INA)] . . . , you are being released on your own recognizance[.]". Thereafter, petitioner lived freely in the community, complied with the majority of her reporting obligation, and pursued immigration relief.

Respondents' own Return confirms that Ms. Cetino Garcia's re-detention resulted from a discretionary custody redetermination almost seven years after her release, based on a previous removal order from 2006. ICE officers arrested Ms. Cetino Garcia when she appeared for a scheduled ICE check-in pursuant to an administrative warrant issued by the agency—not a warrant reviewed or signed by a judicial officer.

These are hallmarks of discretionary enforcement authority, not the automatic mandatory detention regime described in §1225(b). Mandatory detention regimes do not involve post-release custody redeterminations, managerial approval, or discretionary arrest warrants issued long after release.

Courts in this District have repeatedly rejected the Government's attempt to retroactively label such discretionary re-detention as "mandatory" by invoking § 1225(b). See E.A.T.-B. v. Wamsley; Ramirez Tesara v. Wamsley; Kumar v. Wamsley; Ledesma Gonzalez v. Bostock.

B. Buenrostro-Mendez Does Not Authorize Revocation of Liberty Without Due Process

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Respondents rely heavily on the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi* to argue that Petitioner remains subject to mandatory detention under § 1225(b) despite her prior release. That reliance is misplaced.

First, Fifth Circuit authority is not binding on this Court. This case arises in the Ninth Circuit, where district courts, including this one, have repeatedly applied the Mathews v. Eldridge framework to re-detention of previously released noncitizens.

Second, *Buenrostro-Mendez* addressed a question of statutory interpretation, whether § 1225(b) applied to certain noncitizens as a categorical matter. It did not address procedural due process. The decision did not hold that the Fifth Amendment permits revocation of an established liberty interest without notice and a hearing. Nor did it analyze the Mathews v. Eldridge balancing framework governing procedural due process.

Third, *Buenrostro-Mendez* did not consider whether a noncitizen who has been expressly released under § 236 on an Order of Release on Recognizance acquires a protected liberty interest in continued freedom from detention absent constitutionally adequate procedures.

Finally, the Fifth Circuit did not address, and therefore did not disturb, this District's line of decisions in *E.A.T.-B.*, *Ramirez Tesara*, *Kumar*, and *Ledesma Gonzalez*, which hold that even where DHS asserts mandatory detention, due process requires advance notice and a hearing before revoking a previously granted liberty interest.

Accordingly, *Buenrostro-Mendez* does not resolve the constitutional question presented here.

C. Even Assuming § 1225(b) Applied, Due Process Still Required a Pre-Deprivation Hearing

Even if Respondents could properly invoke § 1225(b), that statutory label does not eliminate constitutional due process.

This Court has already held that when DHS seeks to re-detain an individual who was previously released and living in the community, due process independently requires advance

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notice and a hearing before a neutral decisionmaker, even where the Government asserts mandatory detention. E.A.T.-B. v. Wamsley.

Respondents' reliance on Johnson v. Arteaga-Martinez is misplaced. That decision addressed whether courts may impose statutory bond-hearing requirements; it did not authorize the Government to revoke liberty without any process at all. Nothing in Arteaga-Martinez permits ICE to summarily seize a previously released individual without notice or a hearing.

III. RESPONDENTS MISAPPLY THE MATHEWS v. ELDRIDGE FRAMEWORK TO MS. CETINO GARCIA

Respondents concede that the *Mathews v. Eldridge* test governs the due process analysis. In all material respects, this case presents the same constitutional defect identified in this Court's recent re-detention decisions: a noncitizen previously released into the community was taken back into custody by DHS without advance notice, without a neutral hearing, and without any prior adjudication of danger, flight risk, or necessity. Applied to Ms. Cetino Garcia's actual circumstances, every factor weighs decisively in favor of requiring a pre-deprivation hearing. The constitutional defect presented here is materially indistinguishable from the circumstances addressed in this Court's recent re-detention cases ordering release. The circumstances here mirror those in *E.A.T-B., Ramirez Tesara*, and *Kumar*, where courts in this District ordered immediate release after ICE re-detained previously released individuals without advance notice or a hearing.

A. Ms. Cetino Garcia's Liberty Interest Is Exceptionally Strong

Ms. Cetino Garcia was not apprehended at the border or newly arrived. She had been released on OREC, living in the community, and complying with ICE supervision for nearly seven years. Her liberty interest in not being detained "is the most elemental of liberty interests[.]" Hamdi v. Rumsfeld 542 U.S. 507, 529 (2004).

Since her release in 2019, Petitioner has lived continuously in the community for nearly seven years while complying with ICE supervision and attending all required reporting

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appointments. During that time she maintained community ties and remained fully known to the Government's supervision program. Even if the Government had initial discretion to detain or release Petitioner, its decision to release her on conditional parole triggers "a protected liberty interest in remaining out of custody." Pinchi v. Noem, 793 F. Supp. 3d 1025, 1032 (N. D. Cal. 2025).

Respondents' attempt to diminish this interest because Ms. Cetino Garcia is a noncitizen is contrary to Supreme Court and Ninth Circuit precedent recognizing that freedom from physical detention lies at the core of the Due Process Clause, regardless of immigration status.

B. The Risk of Erroneous Deprivation Was Especially High in Ms. Cetino Garcia's Case

ICE re-detained Ms. Cetino Garcia without a hearing and based its decision exclusively on:

- routine database queries
- internal ICE review
- no neutral adjudication
- no opportunity for Ms. Cetino Garcia to be heard
- no assessment of alternatives

Ms. Cetino Garcia has no criminal history in the United States or any other country. Even accepting the existence of the 2006 removal order, due process does not permit unilateral executive determination to justify incarceration without prior procedural safeguards. The issue is not whether ICE believes violations occurred, but whether Petitioner was afforded a constitutionally adequate process before liberty was revoked.

Without a hearing, ICE made a unilateral determination that Ms. Cetino Garcia should be deprived of liberty based on untested allegations, exactly the type of erroneous deprivation due process is designed to prevent.

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A pre-deprivation hearing would have allowed a neutral decisionmaker to assess whether detention was actually necessary, whether Ms. Cetino Garcia posed any danger or flight risk, and whether less restrictive alternatives could suffice.

C. The Government's Interest Does Not Outweigh the Required Safeguards

Providing Ms. Cetino Garcia with written notice and a prompt pre-deprivation hearing would have imposed minimal administrative burden. ICE already conducted a custody review, issued paperwork, and executed an arrest. Requiring basic constitutional process before revoking liberty does not meaningfully impair the Government's interests.

Respondents rely on 8 C.F.R. § 1236.1(c)(9), which states that release "may be revoked at any time." But regulatory language permitting revocation "at any time" does not override constitutional due process requirements. Administrative discretion cannot eliminate Fifth Amendment protections.

Even if revocation authority exists under the regulation, the Constitution governs how that authority may be exercised. See Mathews v. Eldridge, 424 U.S. 319 (1976).

The question is not whether ICE may revoke release, but whether it may do so without notice and a neutral hearing prior to seizure. The Due Process Clause requires the latter.

As this Court has repeatedly held, the Government's asserted interest in re-detaining previously released individuals does not outweigh the substantial risk of erroneous deprivation where no hearing is provided.

IV. PREVIOUS REMOVAL ORDER DOES NOT JUSTIFY MS. CETINO GARCIA'S SUMMARY RE-DETENTION

Respondents rely heavily on Ms. Cetino Garcia's previous removal order to justify re-detention. That reliance is legally insufficient. Respondents' own declaration states that ICE "discovered" the 2006 removal order only during Petitioner's February 2026 check-in. Benjamin Decl. ¶14. But that assertion underscores the arbitrary nature of the re-detention. The removal

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order was a longstanding government record maintained within DHS databases and accessible to ICE throughout the years Petitioner remained under supervision. If the agency truly lacked awareness of its own records for nearly seven years, that administrative oversight cannot justify the summary revocation of Petitioner's liberty without constitutionally required safeguards.

Respondents rely heavily on Petitioner's 2006 removal order, but that does not answer the constitutional question presented here. Even accepting the existence and legal significance of that order, due process still required constitutionally adequate procedures before DHS could revoke a previously granted release and take Petitioner back into physical custody. The prior removal order may explain why DHS wished to reconsider Petitioner's custodial status; it does not excuse the Government's failure to provide notice, a neutral hearing, and an individualized determination before re-detention occurred.

V. POST-DEPRIVATION PROCESS CANNOT CURE THE VIOLATION SUFFERED BY MS. CETINO GARCIA

Respondents argue that Ms. Cetino Garcia may be entitled to a bond hearing after re-detention. That concession underscores the constitutional violation. Respondents argue Petitioner could request a bond hearing. But Respondents simultaneously assert she is detained under § 1225(b), which does not provide bond jurisdiction.

Respondents cannot have it both ways. If Petitioner is truly subject to mandatory detention under § 1225(b), then a bond hearing is unavailable and post-deprivation process is no answer at all. If, on the other hand, some custody redetermination process is available, that only confirms that individualized liberty-related determinations matter and should have been provided before Petitioner was seized and jailed. Under either theory, Respondents cannot justify the complete absence of pre-deprivation safeguards.

The availability of a theoretical post-deprivation hearing cannot cure the unconstitutional manner in which liberty was revoked. Thus, any purported post-deprivation bond process is illusory and futile under Respondents' own legal theory.

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Ms. Cetino Garcia's claim is not merely about entitlement to a bond hearing; it is about the unlawful manner in which her liberty was revoked. As this Court has held, post-deprivation hearings cannot remedy the constitutional injury caused by a seizure of liberty that occurred without due process.

Due process requires safeguards before liberty is taken, not after. Where the Government has already deprived a person of liberty without constitutionally required procedures, the only effective remedy is restoration of that liberty.

VI. RELIEF

Because ICE summarily revoked Ms. Cetino Garcia's release without written notice, without a pre-deprivation hearing, and without any individualized finding of danger or flight risk by a neutral decisionmaker, her detention is unconstitutional under the Fifth Amendment.

In cases involving materially indistinguishable facts, this Court has consistently recognized that post-deprivation process is inadequate as a matter of law, and that the only effective remedy for such a due process violation is immediate release, not continued confinement pending a belated bond hearing.

DATED this 6th day of March, 2026.

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