Magistrate Judge Michelle L. Peterson

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

NICO FRANCISCO FRANCISCO, Petitioner, v. JULIO HERNANDEZ, *et al.*, Respondents.	Case No. 2:26-cv-00890-MLP FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: April 6, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Nico Francisco Francisco at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In 2022, immigration officers encountered Petitioner shortly after he unlawfully entered the United States as an unaccompanied minor. U.S. Department of Homeland Security ("DHS") released Petitioner to the Department of Health and Human Services Office of Refugee Resettlement. Ultimately, Petitioner was released to the custody of his brother. Petitioner is now an adult. While released

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

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

he has been granted Special Immigrant Juvenile classification with deferred action and has applied for relief from removal with U.S. Citizenship and Immigration Services ("USCIS").

In February 2026, ICE arrested Petitioner at a scheduled ICE check-in and he has been placed in removal proceedings. Petitioner asserts that procedural due process required written notice and a pre-deprivation hearing before a neutral decisionmaker prior to his re-detention. Pet., ¶¶ 67-70. The Petition seeks his release from immigration custody.

Petitioner further requests that this Court permanently enjoin "his re-detention during the pendency of his removal proceedings absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that [Petitioner] is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks." Pet., Prayer for Relief, ¶ 2. Re-detention is speculative, and this Court should not grant relief when the circumstances of any possible future re-detention cannot be determined (for instance if Petitioner were to commit a violent crime or become subject to a final order of removal). *Lucena-Ojeda v. Noem*, No. 2:26-cv-00085-BAT, 2026 WL 279353, at *3 (W.D. Wash. Feb. 3, 2026) ("the specific circumstances of redetention drive what process is due"). Accordingly, this request should be denied. *See Torres v. Hermosillo*, No. 2:25-cv-02687-LK, 2026 WL 145715, at *8 (W.D. Wash. Jan. 20, 2026).

II. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

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

III. DETENTION AND RELEASE AUTHORITIES

A. Detention under 8 U.S.C. 1225(b)"

Petitioner is an applicant for admission. ICE detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (affirming the government's position that aliens who have not been admitted or are not entitled to be admitted to the United States are "applicants for admission" who are subject to mandatory detention under Section 1225(b)(2)(A)). Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country.").

Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). As the Fifth Circuit recently found, aliens who are present without admission in the United States are "applicants for admission" as defined in Section 1225(a)(1). *Buenrostro-Mendez*, 166 F.4th at 502. The court clarified that an "applicant for admission" is a person "seeking admission" regardless of whether that person is actively engaged in admissions procedures when detained. *Id.*, at 502-06. The Eighth Circuit has agreed that the two terms are the same. *Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *3 (8th Cir. Mar. 25, 2026) ("Here,

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

we agree with the Fifth Circuit that the ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same."). "[W]hile an alien remains an 'applicant for admission' so long as he is 'present in the United States [and] has not been admitted,' 8 U.S.C. § 1225(a)(1), he is also 'presently seeking admission' during this time, regardless of whether he takes "any further affirmative steps to gain admittance,' *Buenrostro-Mendez*, 166 F.4th at 402." *Id.*, at *3. Thus, the *Avila* Court reversed the district court's holding that the Government could not mandatorily detain a noncitizen, who had lived in the United States for years, under Section 1225(b)(2)(A). *Id.*, at *6.

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 v. Rodriguez*, 583 U.S. 281, 283 (2018). This parole terminates automatically at the expiration of the time for which parole was authorized, or upon service of a charging document for either expedited removal proceedings under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. §§ 212.5(e)(1); (2)(i). Upon termination of parole, the applicant reverts to the status that he or she had at the time of parole. *See id.*

On July 8, 2025, DHS issued a memorandum to ICE employees explaining that DHS had revisited its legal position on detention and release authorities. *Rodriguez Vasquez v. Bostock*, 802 F. Supp. 3d 1297, 1308 (W.D. Wash. 2025). The memorandum defined an "applicant for admission" as "an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. *Id.* (citing 8 U.S.C. § 1225(a)(1)). Prior to July 2025, DHS allowed discretionary releases of aliens that fit the definition of an applicant for admission pursuant to 8 C.F.R. § 1236.1(c)(8), instead of only utilizing parole, like what occurred here. But the memorandum clarified, "Effective immediately, it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)] and may not be released

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

from ICE custody except by [8 U.S.C. § 1182(d)(5)]." *Rodriguez Vasquez*, 802 F. Supp. 3d at 1308.

DHS's prior practice of OREC releases for applicants for admission does not mean that those aliens are no longer applicants for admissions. *Buenrostro-Mendez v. Bondi*, 166 F.4th at 506 ("While that is true, the government's past practice has little to do with the statute's text. The text says what it says, regardless of the decisions of prior Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text."); *Avila*, 2026 WL 819258, at *5 ("[N]either *Jennings* nor the Government's history of enforcing § 1225 confines the Government's authority to detain aliens under § 1225(b)(2)(A) to the border.").

Federal Respondents respectfully disagree with a recent decision by a court in this District finding that a person who entered the United States as a UAC "cannot be subject to the detention procedures in § 1225." *Garcia Gabriel v. Hermosillo*, No. 2:25-cv-02594, 2026 WL 194233, at *3 (W.D. Wash. Jan. 26, 2026). Petitioner does not dispute that he is a noncitizen who is present in the United States without having been admitted. Thus, he is an "applicant for admission" and subject to mandatory detention under Section 1225(b) – which is the least restrictive setting available when mandatory detention is applicable.

However, if this Court were to agree with the *Garcia Gabriel* court, then Petitioner's detention would be governed by 8 U.S.C. § 1226(a). *Garcia Gabriel* 2026 WL 194233, at *4. Instead of release from detention as Petitioner seeks here, the appropriate habeas relief would be for this Court to order the immigration judge to hold a bond hearing pursuant to 8 U.S.C. § 1226(a). *Id.*

B. Detention under 8 U.S.C. § 1226(a)

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

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

1226(a), U.S. Department of Homeland Security ("DHS") may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[2] 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). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for immigration judges to consider).

IV. FACTUAL BACKGROUND

In May 2022, Petitioner, a native and citizen of Guatemala, entered the United States at or near Hildago, Texas, without inspection or parole. Hubbard Decl., ¶ 3; Lambert Decl., Ex. A, Form I-213; Ex. B, Warrant for Arrest; Ex. C, Notice of Custody Determination. He was 16 years old. Hubbard Decl., ¶ 3. U.S. Customs and Border Patrol apprehended him shortly after his unlawful entry. Hubbard Decl., ¶ 3. DHS attempted to issue Petitioner a notice to appear charging him as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), but it was not served or filed in immigration court. Hubbard Decl., ¶ 3; Lambert Decl., Ex. D, Notice to Appear. Because petitioner was a minor at that time, he was processed as an unaccompanied alien child ("UAC") and was placed in the custody of Department of Health and Human Services' Office of Refugee

[2] 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)).

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TACOMA, WA 98402
(253) 428-3800

Resettlement. Hubbard Decl., ¶ 4. In June 2022, ORR released Petitioner into custody of his brother. Hubbard Decl., ¶ 5; Lambert Decl., Ex. E. He was later subject to release supervision requirements. Dkt. No. 2, Pet. Decl., ¶¶ 5-14.

In January 2024, U.S. Citizenship and Immigration Services ("USCIS") approved Petitioner's Form I-360, Petition for Special Immigrant Juvenile Status, with deferred action. Hubbard Decl., ¶ 6; Dkt. No. 3-1, I-360 Approval Notice. "Deferred action is an act of administrative convenience to the government which gives some cases lower priority for removal from the United States for a specified period of time." Dkt. No. 3-1, Approval Notice. Petitioner's deferred action remains in effect through January 2028 "unless terminated earlier by USCIS." *Id.*

In May 2024, Petitioner filed an application for relief from removal with USCIS. Hubbard Decl., ¶ 9. That application remains pending.

On February 26, 2026, ICE detained Petitioner based upon the execution of a charging document and violations of his release. Hubbard Decl., ¶ 7; Lambert Decl., Ex. F, Form I-213; Ex. G, Warrant for Arrest. ICE revoked Petitioner's OREC. Hubbard Decl., ¶ 7. ICE issued Petitioner a new notice to appear charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i) which placed him in new removal proceedings. Hubbard Decl., ¶ 7; Lambert Decl., Ex. H, Notice to Appear.

On March 3, 2026, Petitioner filed a motion to terminate his removal proceedings with the immigration court. On March 18, 2026, an immigration judge ordered the parties to coordinate an expeditious adjudication of Petitioner's pending application with USCIS. Hubbard Decl., ¶ 9 Lambert Decl., Ex. I, Order. ICE has submitted a request to USCIS to expedite the processing of Petitioner's application for relief from removal. Hubbard Decl., ¶ 9.

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

Petitioner's next immigration court appearance is scheduled for April 16, 2026. Hubbard Decl., ¶ 11.

V. ARGUMENT

Petitioner incorrectly argues that his detention violates due process because he did not receive notice and a pre-deprivation hearing. Pet., ¶¶ 68-70. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). Federal Respondents acknowledge that Petitioner had liberty interest in his continued freedom from detention while on release.

Turning to the second *Mathews* factor, the risk of a constitutionally significant and erroneous deprivation of Petitioner's liberty did not necessitate a pre-deprivation hearing. The Supreme Court has held that "the Constitution requires some kind of hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing is not appropriate in every situation. *Id.*, at 128 (noting there may be "special case[s]" where a pre-deprivation hearing is impracticable). Petitioner's re-detention qualifies as a special case due to his release violations.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

In *Martinez Hernandez v. Andrews*, the district court found that allegations of release violations that "are not obviously pretextual as in *E.A.T.-B*[3]" provided at least an arguable basis "that providing [the petitioner] with notice and a pre-deprivation hearing would have been impracticable and/or would have motivated his flight." *Martinez Hernandez*, 2025 WL 2495767, at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous deprivation could be reduced through a "prompt, post-deprivation process." *Id.* (collecting cases). Similarly, if this Court were to order a hearing, Petitioner should not be released as his violations provided ICE with a reasonable basis to arrest him without notice, and Petitioner should be provided with a post-deprivation hearing.

Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test and procedural safeguards "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in protecting immigration proceedings from unnecessary delay, especially considering Congress's purpose for enacting Section 1225(b).

Federal Respondents recognize that courts in this District, including this Court, have found that due process requires a pre-deprivation hearing when re-detention was the result of release violations such as the ones that occurred here. *See, e.g.*, *Lnu v. Hermosillo*, No. C26-635-

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

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

MLP, 2026 WL 691944, at *2 (W.D. Wash. Mar. 11, 2026). However, in this case, Petitioner's detention also corresponded with DHS's decision to institute removal proceedings by issuing a notice to appear. Petitioner previously had not been placed in removal proceedings. This is not like other cases where a noncitizen has been re-detained during ongoing removal proceedings. The notice to appear constitutes a material change in circumstances on its own in addition to the violations of release.

VI. CONCLUSION

Federal Respondents respectfully request that this Court deny Petitioner's request for release. If this Court should find that due process requires a hearing before a neutral arbiter, this Court should order the immigration court to provide Petitioner with a post-detention hearing.

DATED this 31st day of March, 2026.

Respectfully submitted,

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 2,747 words, in compliance with the Local Civil Rules.