District Judge Ricardo S. Martinez

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

VICTORIANO CARRILLO PABLO, Petitioner, v. JULIO HERNANDEZ, *et al.*, Respondents.	Case No. 2:26-cv-02601-RSM FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: August 11, 2026.

I. INTRODUCTION

Petitioner seeks habeas relief from his immigration detention at the Northwest ICE Processing Center. He is an applicant for admission who was apprehended after entering the United States without inspection and remains subject to the mandatory detention provisions of 8 U.S.C. § 1225(b). Although Petitioner was initially released by immigration officials, and his removal proceedings were dismissed, Petitioner was recently arrested and indicted for committing felony sex offenses that involve the use of force. Immigration officials then arrested Petitioner and he now finds himself in removal proceedings once again. Even if Petitioner's detention is found to be governed by 8 U.S.C. § 1226(a), due process did not require a pre-deprivation hearing under the specific facts of this case. Petitioner is not entitled to release from custody, and Federal

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Respondents respectfully request that the petition be denied.

II. BACKGROUND

A. Section 1225(b) Detention

Federal Respondents' position is that Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2)(A). Language in the Ninth Circuit's recent decision in *Rodriguez Vazquez* supports this interpretation. *Rodriguez Vazquez v. Bostock*, 25-6842, 2026 WL 2196424, at *10 (9th Cir. July 30, 2026) ("In this case, we conclude that § 1225(b)(2)(A), based on its text and context, is best construed as applying to aliens entering the United States at the border. Section 1226, by contrast, is best understood as governing inadmissible and deportable aliens present in the interior of the United States.").

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). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded."). The sole means of release from detention pursuant to Section 1225(b) is temporary parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *Jennings*, 583 U.S. at 288.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

B. Petitioner Carrillo Pablo

Petitioner is a native and citizen of Guatemala. Declaration of Deportation Officer Rita Soraghan ("Soraghan Decl.,") ¶ 3; Declaration of Katherine G. Collins ("Collins Decl.,") Exh. A (2021 Form I-213). On May 31, 2021, at the age of 15, Petitioner entered the United States at or near Sasabe, Arizona, without inspection or parole by an immigration officer. Soraghan Decl., ¶ 4; Collins Decl., Exh. A. A few days later, on June 4, 2021, the United States Border Patrol encountered Petitioner alone, determined he had entered unlawfully, took him into custody, and transported him to the Tucson Coordination Center for processing as an Unaccompanied Alien Child. Soraghan Decl., ¶ 5; Collins Decl., Exh. A.

The next day, June 5, 2021, Border Patrol issued a Warrant of Arrest, and a Notice to Appear ("NTA") charging him as removable under INA § 212(a)(6)(A)(i), although this NTA was not filed with the Immigration Court. Soraghan Decl., ¶ 6; Collins Decl., Exh. B (I-200); Exh. C (Notice of Custody); Exh. E (First NTA). On June 7, 2021, Petitioner was transferred to the Heartland Beverly Shelter, a temporary shelter for unaccompanied minors, and he was later released on July 13, 2021, to a family member. Soraghan Decl., ¶¶ 7–8; Collins Decl., Exh. D (ORR Release Notification). The record contains no evidence that Petitioner was placed on any form of conditional release or supervision requirements. *See* Collins Decl., Exh. D (ORR Release Notification); Exh. L (2026 Form I-213).

Subsequently, on October 13, 2021, DHS cancelled the first NTA and issued a new NTA under the same statutory charge, this time scheduling Petitioner to appear at the Portland Immigration Court; DHS filed the NTA with EOIR the same day. Soraghan Decl., ¶ 9; Collins Decl., Exh. F (DOC).

On June 15, 2023, Petitioner appeared with counsel for a master calendar hearing in the Portland Immigration Court, where DHS offered dismissal under prosecutorial discretion, which

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Petitioner accepted, and the Immigration Judge dismissed the case. Soraghan Decl., ¶ 10; Collins Decl., Exh. G (IJ Dismissal Order).

On September 11, 2023, Petitioner applied to USCIS for asylum, and that application remains pending. Soraghan Decl., ¶ 11; Collins Decl., Exh. H (USCIS Receipt Notice). On June 28, 2024, Petitioner filed a petition for Special Immigrant Juvenile status ("SIJ") with deferred action, and USCIS approved the petition on September 16, 2024, granting deferred action for four years unless terminated earlier. Soraghan Decl., ¶ 12; Collins Decl., Exh. K (SIJ Approval Notice).

In March of 2026, Petitioner was arrested and indicted for committing Sodomy in the First Degree, and two counts of Unlawful Sexual Penetration in the First Degree, on or about November 25, 2024. Soraghan Decl., ¶¶ 13,14; Collins Decl., Exh. J (Indictment). These charges are considered Class A Felonies and involve forcible sexual contact. *See* ORS 163.405; 163.411; Collins Decl., Exh. J.

On June 19, 2026, ERO discovered Petitioner's arrest and pending charges. Soraghan Decl., ¶ 16. Days later, on June 22, 2026, USCIS terminated Petitioner's deferred action. Soraghan Decl., ¶ 17; Collins Decl., Exh. K (SIJ Termination Notice). On June 23, 2026, ERO issued a Form I-200 Warrant for Petitioner's Arrest. Soraghan Decl., ¶ 18; Collins Decl., Exh. M (2026 I-200).

ERO encountered Petitioner on July 20, 2026, during a vehicle stop, confirmed his identity, arrested him, and booked him into the Northwest ICE Processing Center. Soraghan Decl., ¶ 19; Collins Decl., Exh. L; Exh. O (2026 Notice of Custody).

On July 22, 2026, ERO issued a new NTA charging Petitioner under INA § 212(a)(6)(A)(i) and scheduled his appearance at the Tacoma Immigration Court; DHS filed the NTA with the Immigration Court the next day. Soraghan Decl., ¶¶ 20–21; Collins Decl., Exh. P

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

(2026 NTA). Petitioner is next scheduled to appear before the Immigration Judge on August 20, 2026, and he remains detained at the Northwest ICE Processing Center. Soraghan Decl., ¶¶ 22–23.

III. LEGAL STANDARD

"The 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." *Thuraissigiam*, 591 U.S. at 125 n. 20. Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. 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); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A).

Federal Respondents maintain that Petitioner remains subject to mandatory detention under 8 U.S.C. § 1225(b) as an applicant for admission who was initially encountered and processed at the border. 8 U.S.C. § 1225(a)(1); *Jennings v. Rodriguez*, 583 U.S. 281, 293-94; 297–303 (2018) (no implied bond hearing under 8 U.S.C. § 1225(b)); *see also Thuraissigiam*, 591 U.S. at 115.

The Ninth Circuit's recent decision in *Rodriguez Vazquez* supports this. In *Rodriguez Vazquez*, the court held that 8 U.S.C. § 1225(b)(2)(A) is best construed as applying to aliens entering the United States at the border, while 8 U.S.C. § 1226 governs inadmissible and deportable aliens already present in the interior who are first apprehended inland. *Rodriguez Vazquez*, 2026 WL 2196424 at *10 (9th Cir. July 30, 2026). The petitioners in *Rodriguez Vazquez*

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

had lived in the United States for years and were first encountered in the interior. That is not the situation here. Petitioner was initially encountered near the border, processed as a recent entrant and applicant for admission, placed in removal proceedings based on a charge of inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), and released shortly thereafter. Petitioner's subsequent detention in the interior does not erase his original classification and processing under the 8 U.S.C. § 1225 framework. Petitioner's prior release did not permanently convert his detention authority to 8 U.S.C. § 1226(a). *See* 8 C.F.R. § 236.1(c)(9) (release may be revoked at any time).

Federal Respondents acknowledge that courts in this District have reached a different conclusion in some cases in which petitioners initially entered the United States as UACs and were subsequently released to a sponsor by ORR. *See e.g., Reyes v. Hernandez,* No. 2:26-CV-00633-GJL, 2026 WL 820481, at *2 (W.D. Wash. Mar. 25, 2026) (citing cases). However, those cases do not alter the statutory command or its proper application here.

Even if Petitioner is detained pursuant to Section 1226(a), Petitioner does not assert that he has requested a bond redetermination hearing or that he has been denied a hearing due to his mandatory detention status. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); 8 C.F.R. § 1003.19(e); *see also Kim v. Mullin*, 2026 WL 948347, at *3-4 (W.D. Wash. April 8, 2026) (finding prudential exhaustion required where petitioner detained under § 1226(a) did not avail himself of right to have an immigration judge review the initial ICE detention determination); *Coke v. Scott*, C25-0694-RSM-BAT, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025) (finding same where petitioner did not claim he had requested a bond redetermination hearing and Respondents averred he had not done so), *report and recommendation adopted*, 2025 WL 2107736 (W.D. Wash. July 28, 2025); *Cristobal v. Asher*, 20-cv-1493-RSM-BAT, 2020 WL 8678097, at * 3 (W.D. Wash. Dec. 14, 2020), *Rep. & Rec. adopted by* 2021 WL796597 (W.D.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Wash. Mar. 2, 2021) (dismissing habeas petition because the petitioner had failed to seek a bond redetermination hearing at the administrative level).

Accordingly, Petitioner's detention is lawful and his petition should be denied.

B. Due process did not require notice and a hearing prior to Petitioner's detention.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. While courts, including this Court, have found that due process requires a pre-deprivation hearing in certain circumstances of re-detention, the facts here do not support this requirement.

Upon his unlawful entry into the country, Petitioner was released from immigration custody, without any conditions or supervision requirements. Soraghan Decl., ¶¶ 7–8; Collins Decl., Exh. D; Exh. L. On June 15, 2023, Petitioner's prior removal proceedings were dismissed without prejudice. Soraghan Decl., ¶ 10; Collins Decl., Exh. G (IJ Dismissal Order). Given this posture, Petitioner's 2026 arrest by immigration officials is distinguishable from the body of cases in this District holding that a noncitizen is entitled to a pre-deprivation hearing prior to the revocation of an order of recognizance, parole, or other forms of conditional liberty pending the finality of their removal proceedings. *See A.B.J.C. v. Hermosillo*, No. C26-0185JNW, 2026 WL 497097, at *2 (W.D. Wash. Feb. 23, 2026) (compiling cases in this District and elsewhere in which courts required the Government to provide due process to noncitizens before revoking supervised release and re-detaining them). Where no form of conditional release or active removal proceedings exist, noncitizens are not entitled to a pre-deprivation hearing prior to detention. *See, e.g. Garcia Gabriel v. Hermosillo*, No. 2:25-CV-02594-DGE-GJL, 2026 WL 194233, at *4 (W.D. Wash. Jan. 26, 2026); *Cotoc Yac De Yac v. Hermosillo*, No. 2:25-CV-02593-DGE-TLF, 2026 WL 124334, at *4 (W.D. Wash. Jan. 16, 2026).

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Even if this were construed as a case of "re-detention," due process did not require that Petitioner be given a pre-deprivation hearing before his arrest by immigration officials. Due process is flexible and calls for such procedural protections as a particular situation demands. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). To analyze procedural due process, *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.

The Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due [to noncitizens] must account for the government's countervailing interests in immigration enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). The Supreme Court has "firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003).

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). However, given Petitioner's unlawful presence in the country, ICE had statutory authority to arrest and detain Petitioner pending the removal proceedings initiated against him the day of his arrest. Furthermore, Petitioner's liberty interest must also be considered diminished given that Petitioner was arrested and charged with multiple felony sex offenses involving force. Soraghan Decl., ¶¶ 13,14; Collins Decl., Exh. J. While present in the United States on only deferred action from the government, Petitioner chose to engage in horrifying conduct that indicates that at liberty, he is presents a serious public safety concern. This clearly constitutes a material change in circumstances from when Petitioner was

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

initially released from immigration custody. *See Quinonez Torres v. Hermosillo*, No. 2:26-cv-00076-TLF, 2026 WL 547591 at *8-*9 (W.D. Wash. Feb. 23, 2026) (addressing a petitioner with a pending assault charge); *Bealter Reyes v. Hermosillo,* No. 2:26-cv-00270-TLF at 2, 8-9 (W.D. Wash. Feb. 24, 2026) (addressing a petitioner with a pending theft charge). Therefore, his liberty interest should be considered significantly less than someone who had not committed a crime.

Turning to the second *Mathews* factor, the risk of erroneous deprivation of Petitioner's liberty in the absence of a pre-deprivation was low here. 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). The facts here qualify as a special case.

Petitioner was arrested and indicted for committing felony sex offenses, a fact that Petitioner ignores, but also does not deny. Petitioner's detention was based on objective facts. The agency had access to Petitioner's criminal history and made a custody determination based on Petitioner's recent arrest. As such, the risk of erroneous deprivation would have been minimal, while the burdens of providing him with advance notice and process would have been substantial, as this could undeniably motivate Petitioner's flight. *Martinez Hernandez v. Andrews,* No. 1:25-CV-01035 JLT HBK, 2025 WL 2495767 at *12 (E.D. Cal. Aug. 28, 2025).

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. The government has a strong interest in preventing noncitizens from "remain[ing] in the United States in violation of our law," *Demore*, 538 U.S. at 518 (quotations omitted), as well as an interest in "ensuring the appearance

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

of [noncitizens] at future immigration proceedings" and "preventing danger to the community," *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Ninth Circuit, in *Rodriguez Diaz*, describes these as "interests of the highest order." 53 F.4th at 1208. Here, the government's interests in efficient enforcement, protecting the community, and ensuring Petitioner's appearance at removal proceedings are substantial and heightened by Petitioner's recent and serious unlawful conduct. Petitioner's offenses also underscore that a pre-deprivation hearing would have increased the likelihood that he would abscond. Accordingly, due process does not require a pre-deprivation hearing for Petitioner in this case.

C. Immediate Release is Not Warranted

Alternatively, if this Court were to find that Petitioner's detention is governed by Section 1226(a), the appropriate form of relief would be to require the Government to provide Petitioner with a bond hearing as he has not had one yet. This would allow for an immigration judge to assess Petitioner's risk of flight and dangerousness to the community. *See Castulo-Cerro v. Hermosillo*, No. 2:26-CV-00437-TMC, 2026 WL 395324, at *3 (W.D. Wash. Feb. 12, 2026) (ordering Section 1226(a) bond hearings for Bond Denial Class petitioners who have not yet had bond hearings); *Velasquez v. Scott*, No. 2:26-CV-00509-RAJ, 2026 WL 820822, at *2 (W.D. Wash. Mar. 25, 2026); *Garcia Gabriel*, 2026 WL 194233, at *4. As this would be a Section 1226(a) bond hearing, the burden should be placed on Petitioner. *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting *Matter of Guerra*, 24 I&N Dec. at 38 ("At this stage, the burden is on the non-citizen to 'establish to the satisfaction of the Immigration Judge ... that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.'").

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

D. Petitioner's Administrative Procedure Act claims must be dismissed for lack of subject matter jurisdiction

Petitioner seeks to challenge his detention on grounds that violated the Administrative Procedure Act ("APA"). Dkt. 1 at 9-10. The Court has no subject matter jurisdiction to hear these claims. Where other adequate statutory remedies exist, the APA does not apply. See 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.") (emphasis added). Simply put, "federal courts lack jurisdiction over APA challenges whenever Congress has provided another 'adequate remedy.'" *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998). Where, as here, the gravamen of the claim challenges the legality of custodial detention and seeks release from custody, habeas corpus provides an adequate and exclusive remedy. *See* 5 U.S.C. § 704. Because Petitioner's APA claims are directed at the fact and duration of his detention, they are not independently reviewable under the APA.

//

//

//

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

V. CONCLUSION

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

DATED this 6th day of August, 2026.

Respectfully submitted,

s/ Katherine G. Collins
KATHERINE G. COLLINS, CA #315903
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: katherine.collins@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 3,154 words, in compliance with the Local Civil Rules.