The Honorable James L. Robart

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

DARVI JESUS RIVAS, Petitioner, v. BRUCE SCOTT, *et al.*, Respondents.[1]	Case No. 2:26-cv-02606-JLR FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: August 12, 2026

I. INTRODUCTION

This Court should deny Petitioner Darvi Jesus Rivas's Petition for Writ of Habeas Corpus. Dkt. No. 1. Petitioner is detained at the Northwest ICE Processing Center ("NWIPC") pursuant to 8 U.S.C. § 1225(b)(2)(A) as an applicant for admission. He entered the United States without inspection in September 2022, was later placed in removal proceedings and released on an Order of Recognizance ("OREC"), received Temporary Protected Status ("TPS") that has since expired, and was the subject of proceedings that an Immigration Judge dismissed in September 2024. On July 3, 2026, Petitioner was arrested pursuant to a Warrant for Arrest of Alien and

[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

contemporaneously issued a new Notice to Appear charging inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). A merits hearing is scheduled for September 10, 2026.

The Petition challenges the lawfulness of the current detention and asserts that the prior OREC remained in effect after the dismissal of the earlier proceedings. Federal Respondents' position is that the prior OREC terminated by operation of law upon dismissal of the earlier proceedings, and that the subsequent issuance of a new Notice to Appear independently authorized the detention.

Accordingly, Federal Respondents respectfully request the Court deny the Petition without an evidentiary hearing. This return is supported by the pleadings and documents on file in this case, the Declaration of Deportation Officer Freite Subero Arias ("Subero Decl."), and the Declaration of Lawrence Van Daley ("Van Daley Decl."), with accompanying exhibits.

II. BACKGROUND

A. Section 1225(b) Detention.

Section 1225 applies to applicants for admission. An applicant for admission is defined as an alien present in the United States who has not been admitted or a noncitizen who arrives in the United States, whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Petitioner entered without inspection and has never been admitted. He therefore remains an applicant for admission.

Applicants for admission fall into one of two categories under 8 U.S.C. § 1225(b). Section 1225(b)(2) is the broader catchall provision that applies to all applicants for admission not covered by 8 U.S.C. § 1225(b)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under 8 U.S.C. § 1225(b)(2)(A), a noncitizen who is an applicant for admission is subject to mandatory detention pending full removal proceedings if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. §

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

1225(b)(2)(A). The Supreme Court has held that 8 U.S.C. §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded. *Jennings*, 583 U.S. at 287.

The sole means of release from detention under 8 U.S.C. § 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.

Federal Respondents acknowledge that this Court and other judges in this District have concluded that noncitizens previously released on an OREC are detained under 8 U.S.C. § 1226(a) rather than under the mandatory detention provisions of 8 U.S.C. § 1225(b). *See, e.g.*, *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1197–98 (W.D. Wash. 2025); *Subham v. Noem*, C26-292-SKV, 2026 WL 497101, at *2 (W.D. Wash. Feb. 23, 2026). Federal Respondents recognize that, given the factual similarities, this Court may determine that Petitioner is detained under 8 U.S.C. § 1226(a). Even under that framework, however, detention remains lawful for the reasons set forth below.

If the Court concludes that 8 U.S.C. § 1226(a) governs, the authority for both detention and the prior OREC derived from that statute, which conditions both detention and release on a pending decision on removability. 8 U.S.C. § 1226(a); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007) (release on an OREC is authorized under 8 U.S.C. § 1226(a)(2)(B)). When the Immigration Judge dismissed the prior proceedings on September 16, 2024, that statutory predicate ceased, and the OREC terminated by operation of law. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1, 1236.1. The new Notice to Appear and Warrant for Arrest of Alien issued on July 3, 2026, independently authorized detention under 8 U.S.C. § 1226(a).

B. Petitioner Darvi Jesus Rivas.

Petitioner is a native and citizen of Venezuela. Subero Decl., ¶ 3. On or about September

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

10, 2022, an officer of U.S. Customs and Border Protection ("CBP") encountered Petitioner in or near El Paso, Texas. *Id.* The CBP officer determined that Petitioner had entered the United States without inspection and lacked valid documents authorizing entry. *Id.* Petitioner was deemed inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* Petitoner was released on parole with instructions to report to an ICE field office. *Id.*

On November 8, 2022, Petitioner reported to the Seattle, Washington ICE field office. Subero Decl., ¶ 4. He was issued a Notice to Appear charging inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and was released on an OREC. Id; Van Daley Decl., Exs. 1 (Notice to Appear), 2 (OREC).

On September 16, 2024, an Immigration Judge in Seattle granted an unopposed motion to dismiss the removal proceedings, noting that Petitioner had been granted Temporary Protected Status. Subero Decl., ¶ 5; Van Daley Decl., Ex. 3 (Dismissal Order).

Petitioner's Temporary Protected Status automatically expired on April 3, 2025, based on the terms of the grant. Subero Decl., ¶ 6.

On July 3, 2026, Petitioner was taken into Immigration and Customs Enforcement ("ICE") custody during a traffic stop in Tumwater, Washington, pursuant to a Warrant for Arrest of Alien. Subero Decl., ¶ 7; Van Daley Decl., Exs. 4 (Form I-213), 5 (Warrant). He was contemporaneously issued a new Notice to Appear again charging inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). Subero Decl., ¶ 7; Van Daley Decl., Ex. 6 (2026 Notice to Appear). Petitioner was transported to the NWIPC, where he remains detained. Subero Decl., ¶ 7.

Petitioner is scheduled to appear for a merits hearing before an Immigration Judge in Tacoma, Washington, on September 10, 2026. Subero Decl., ¶ 8.

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited

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

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." *DHS 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.

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). Habeas review does not permit this Court to reweigh evidence or substitute its judgment for that of the Immigration Judge. *Martinez v. Clark,* 124 F.4th 775, 783 (9th Cir. 2024).

IV. ARGUMENT

A. Petitioner's Current Detention Is Lawful.

Petitioner's principal claim is that Federal Respondents acted unlawfully by re-detaining him after the September 2024 dismissal of his prior removal proceedings and his subsequent period of compliance while released on an OREC. Dkt. No. 1 at 1-2. That claim fails.

The new Notice to Appear issued on July 3, 2026, independently initiated removal proceedings and authorized Petitioner's arrest and detention. The prior OREC did not survive the dismissal of the earlier proceedings.

The authority to release a noncitizen on an OREC (conditional parole) is conferred by 8 U.S.C. § 1226(a)(2)(B). *Ortega-Cervantes*, 501 F.3d at 1115 ("It is apparent that the INS used the phrase "release on recognizance" as another name for "conditional parole" under § 1226(a)"). That authority exists only while a decision on removability remains pending. *See* 8 U.S.C. § 1226(a) (an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States; the Attorney General may release the alien on conditional parole). Once

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

the Immigration Judge dismissed the prior removal proceedings on September 16, 2024, that statutory predicate disappeared. At that moment, the legal authority to keep Petitioner under the OREC ceased by operation of law. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1, 1236.1 (custody and release determinations are tied to the pendency of removal proceedings). Even if ICE never physically cancelled or retrieved the paper document, the OREC terminated when the proceedings that authorized it ended. A temporary discretionary release does not create a freestanding or permanent right to remain at liberty that continues after the underlying proceedings have been dismissed nor does that temporary discretionary release serve to bar the later initiation of new removal proceedings.

The subsequent issuance of a new charging document on July 3, 2026, supplied a fresh and independent basis for detention under the governing statute. Nothing in 8 U.S.C. § 1226(a) or the implementing regulations requires ICE to demonstrate a material change in circumstances relative to the prior period of release before issuing a new Notice to Appear or exercising the detention authority that accompanies it. Prior compliance, while relevant to any future parole determination, does not extinguish the authority to detain once a new Notice to Appear has been issued.

Petitioner relies heavily on *Sagrero-Perez v. Scott*, C26-0932 TSZ, 2026 WL 1283516 (W.D. Wash. May 11, 2026). That reliance is misplaced. In *Sagrero-Perez*, the petitioner's prior removal proceedings had been dismissed, and ICE later issued a Form I-200 Warrant for Arrest. *Id.* at *1-2. Critically, no new Notice to Appear was issued before or at the time of the arrest. *Id.* The court held that the warrant violated 8 C.F.R. § 236.1(b)(1), which permits issuance of a Form I-200 only at the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed. *Id.* at *2-3. Because no Notice to Appear was outstanding or newly issued, the Court concluded the warrant was invalid and that the subsequent re-detention without pre-deprivation process violated due process. *Id.* at *3.

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

The present case is materially different. On July 3, 2026, Petitioner was contemporaneously issued a new Notice to Appear charging inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and was arrested pursuant to a Warrant for Arrest of Alien. Subero Decl., ¶ 7; Van Daley Decl., Exs. 5, 6. The issuance of the new Notice to Appear satisfies the regulatory requirement identified in *Sagrero-Perez* and independently triggers detention authority. The absence of a new Notice to Appear was the decisive fact in *Sagrero-Perez*; that fact is not present here. *See Sagrero-Perez*, 2026 WL 1283516 *2-3.

B. Petitioner Has Not Been Denied Due Process.

Petitioner further argues that his detention violates the Fifth Amendment because it rests on an allegedly inaccurate administrative record, because Federal Respondents did not identify a material change in circumstances, and because he was not afforded a meaningful opportunity to contest detention before the initial hearing. Dkt. No. 1 at 6-11. These claims must be evaluated under the three-factor balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, a court considers (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional procedural requirements would entail. *Id.* at 335. Application of these factors demonstrates that Petitioner's detention comports with due process.

1. The Private Interest Affected

The private interest at stake is Petitioner's liberty interest in remaining free from physical detention. That interest is significant. Freedom from governmental custody lies at the heart of the liberty that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. At the same time, the interest is not absolute. The Supreme Court has repeatedly recognized that civil immigration

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

detention pending a decision on admissibility or removability is a constitutionally permissible part of the removal process. *See Demore v. Kim*, 538 U.S. 510, 523–28 (2003); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Petitioner's prior period of release on an OREC that had already terminated by operation of law does not elevate his liberty interest beyond that of other applicants for admission subject to the same statutory framework. This factor therefore carries substantial but not dispositive weight.

2. The Risk of Erroneous Deprivation and the Value of Additional Safeguards

The risk of an erroneous deprivation of liberty under the procedures employed here is low. Petitioner was arrested pursuant to a Warrant for Arrest of Alien issued contemporaneously with a new Notice to Appear that charges a facially valid ground of inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). Subero Decl., ¶ 7; Van Daley Decl., Exs. 5, 6. A merits hearing is already scheduled for September 10, 2026, at which Petitioner will have a full opportunity to contest removability, present evidence, and pursue any available forms of relief. *See* Subero Decl., ¶ 8.

Alleged inaccuracies in the Form I-213, even if accepted as true for purposes of argument, do not undermine the validity of the new charging document or the warrant. The Notice to Appear itself supplies the statutory basis for the proceedings and the accompanying detention. Challenges to the reliability of particular factual assertions contained in the administrative record are properly raised before the Immigration Judge, not as a freestanding basis for immediate release in habeas corpus. *See* 28 U.S.C. § 2241; *see also, Matter of Mejia*, 16 I.&N. Dec. 6 (BIA 1976); *Matter of Barcenas*, 191 I.&N. Dec. 609 (BIA 1988).

The probable value of additional pre-detention procedural safeguards is correspondingly limited. Petitioner already has a promptly scheduled merits hearing. Requiring a separate pre-detention hearing under these circumstances would add little protection against erroneous deprivation while imposing meaningful administrative costs. This factor therefore weighs in favor

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

of the Government.

3. The Governmental Interest

The Government's interest in the procedures used is substantial. Detention of applicants for admission pending a decision on admissibility serves the legitimate purposes of ensuring appearance at proceedings and, where appropriate, effecting removal. *See Demore*, 538 U.S. at 528; *Jennings*, 583 U.S. at 303–06. Requiring additional individualized process beyond the issuance of a new Notice to Appear and a contemporaneous warrant, particularly where the prior OREC had already terminated by operation of law, would impose significant fiscal and administrative burdens on the agency charged with administering the immigration laws. This factor weighs heavily in favor of the Government.

Weighing the three *Mathews* factors together, the procedures employed here satisfy due process. Petitioner's liberty interest is significant but not absolute; the risk of erroneous deprivation is low given the new Notice to Appear, the contemporaneous warrant, and the scheduled merits hearing; and the Government's interest in efficient administration of the removal process is substantial. The prior period of release on an OREC that had already ceased does not tip the balance. *See Mathews*, 424 U.S. at 335; *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982). Petitioner's detention therefore does not violate the Fifth Amendment..

V. CONCLUSION

For the foregoing reasons, Federal respectfully request that this Court deny the Petition for Writ of Habeas Corpus.

//

//

//

//

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

DATED this 7th day of August, 2026.

Respectfully submitted,

s/ Lawrence Van Daley

LAWRENCE VAN DALEY, WSBA No. 53102
Special Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3825
Fax: (253) 428-3826
Email: lawrence.van.daley@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 2,534 words, in compliance with the Local Civil Rules.