

District Judge Kymberly K. Evanson
Magistrate Judge Brian A. Tsuchida

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

E-A-T-B,

Petitioner,

v.

DREW BOSTOCK, *et al.*,

Respondents.

Case No. 2:25-cv-01192-KKE-BAT

**FEDERAL RESPONDENTS' RETURN
MEMORANDUM AND MOTION TO
DISMISS**

Noted for Consideration:
August 15, 2025

I. INTRODUCTION

This Court should dismiss Petitioner E-A-T-B's Amended Petition for Writ of Habeas Corpus. Dkt. 4 ("Pet."). E-A-T-B challenges his detention at the Northwest ICE Processing Center ("NWIPC") as unlawful under the Administrative Procedure Act and the Fifth Amendment. Petitioner does not dispute that he is removable and in removal proceedings. Rather, he asserts that his detention is factually unwarranted because he did not violate the conditions of his release on recognizance under ICE's Alternatives to Detention ("ATD") program. The Petition should be denied because its factual premise is incorrect; contrary to his belief, Petitioner was taken into custody because of ATD violations. Further, Petitioner does not have a due process right to continued participation in the Alternatives to Detention program

1 because participation in that program is discretionary. And Petitioner cannot bring a claim under
2 the APA because habeas review provides an adequate remedy. 5 U.S.C. § 704.

3 Accordingly, Federal Respondents respectfully request that this Court deny the Petition
4 and grant its motion to dismiss. This motion is supported by the pleadings and documents on file
5 in this case, the Declaration of Deportation Officer Christopher Hubbard (“Hubbard Decl.”), and
6 the Declaration of Sean M. Arenson (“Arenson Decl.”), with exhibits attached thereto. The
7 Government does not believe that an evidentiary hearing is necessary.

8 II. FACTUAL AND PROCEDURAL BACKGROUND

9 Petitioner E-A-T-B is a native and citizen of Colombia. Hubbard Decl. ¶ 4. He was
10 apprehended by Border Patrol after entering the United States without inspection on or about
11 September 6, 2023. Hubbard Decl. ¶ 4; Arenson Decl. Ex. A. On September 7, 2023, Petitioner
12 was issued a Notice to Appear charging him with inadmissibility under INA 212(a)(6)(A)(i).
13 Hubbard Decl. ¶ 5; Arenson Decl. Ex. B at L5. On September 8, 2023, Petitioner was released
14 on an Order of Recognizance under ATD program. Hubbard Decl. ¶ 6; Arenson Decl. Ex. C.
15 Petitioner was provided, and signed, a notice of the conditions of his release, including that he
16 comply with the conditions of the ATD program, and that failure to do so would result in a
17 redetermination of his release conditions or his arrest and detention. Arenson Decl. Ex. C.
18 Petitioner was scheduled to appear for an initial hearing on December 3, 2024, but the hearing
19 date was rescheduled to June 5, 2025. Hubbard Decl. ¶ 7; Arenson Decl. Ex. B at L5.

20 While his court appearance was pending, Petitioner had at least two ATD violations.
21 Hubbard Decl. ¶ 8. On December 18, 2024, Petitioner failed to complete a required home visit.
22 *Id.* On January 2, 2025, Petitioner failed to complete a required biometric check in, and GPS
23 data showed that Petitioner was outside geographical limitations without receiving required prior
24 approval from ICE. *Id.*

1 On June 5, 2025, Petitioner appeared at immigration court, and his hearing was continued
2 to June 18, 2025. Hubbard Decl. ¶ 9. Petitioner again appeared at immigration court on June 18,
3 2025, and a further continuance was granted. Hubbard Decl. ¶ 10. An I-200 Warrant for Arrest
4 of Alien was issued for Petitioner on June 18, 2025, and Petitioner was detained by ICE that
5 same date. Hubbard Decl. ¶¶ 11-12 & Ex. 1. Also on June 18, 2025, Petitioner was served an I-
6 286 Notice of Custody Redetermination. Hubbard Decl. ¶ 13 & Ex. 2.

7 An I-213 form (Record of Deportable / Inadmissible Alien) prepared following
8 Petitioner's June 18, 2025, arrest describes Petitioner's arrest, including that Petitioner's attorney
9 was informed that Petitioner was being taken into custody because of ATD violations. Arenson
10 Decl. Ex. D at R37. The I-213 further documents Petitioner's December 18, 2024, and January
11 2, 2025, ATD violations. *Id.*

12 Petitioner appeared in immigration court on July 15, 2025, and his case was set for a final
13 hearing before an Immigration Judge on his application for relief on August 22, 2025. Hubbard
14 Decl. ¶ 16.

15 III. LEGAL STANDARD

16 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
17 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her
18 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §
19 2241(c)(3).

20 IV. ARGUMENT

21 A. Petitioner was detained because he violated his ATD conditions.

22 Petitioner's claim for relief is based entirely on the proposition that the revocation of his
23 release was not based on any individualized factors. *See* Pet. ¶¶ 1, 2, 22, 42, 43, 47, 50. The
24 record reflects that this premise is incorrect. In fact, ICE determined that Petitioner should be

1 detained due to violations of the conditions of his release under the ATD program—conditions
2 which Petitioner agreed to prior to being released on recognizance. Arenson Decl. Ex. D at
3 R37; Ex. C. Therefore, Petitioner’s factual challenge to his detention is unwarranted, and his
4 petition should be denied.

5 **B. Petitioner lacks a due process right to participation in the ATD program.**

6 Participation in the ATD program is at ICE’s discretion. *See Ortiz v. Barr*, No. C20-497-
7 RSM-BAT, 2020 WL 13577427, at *2 (W.D. Wash. Apr. 10, 2020); *Gomez v. Meade*, No.
8 219CV772FTM38NPM, 2020 WL 8768396, at *1 (M.D. Fla. Aug. 17, 2020). Petitioner asserts
9 that the revocation of his ATD status violated the Fifth Amendment’s Due Process Clause, which
10 provides that no person shall “be deprived of life, liberty, or property without due process of
11 law.” U.S. Const. amend. V. The Fifth Amendment protects a due process right to a government
12 benefit if the plaintiff has “an entitlement to it,” *Bd. of Regents of State Colls. v. Roth*, 408 U.S.
13 564, 577 (1972), but “a benefit is not a protected entitlement if government officials may grant or
14 deny it in their discretion,” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). Because
15 Petitioner’s participation in the ATD program was at ICE’s discretion, it is not a protected
16 entitlement under the Fifth Amendment. Therefore, Petitioner has no claim for relief under the
17 Fifth Amendment.

18 **C. The APA does not provide for review of Petitioner’s detention.**

19 Petitioner purports to bring an APA claim as part of his habeas petition. Agency action is
20 reviewable under the APA only if “made reviewable by statute” or when “there is no other
21 adequate remedy in a court” for final agency action. 5 U.S.C. § 704. Neither applies here.
22 Petitioner’s habeas petition itself provides an adequate remedy without resort to the APA. *See*
23 *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973) (habeas “provides for a swift, flexible, and
24 summary determination”); *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988) (“Congress did

1 not intend the general grant of review in the APA to duplicate existing procedures for review of
2 agency action.”; *Trump v. J. G. G.*, 145 S. Ct. 1003, 1007 (2025) (Kavanaugh, J., concurring)
3 (explaining that “claims under the APA are not available” when habeas corpus provides a
4 remedy).

5 To the extent the Court finds that Petitioner has a potentially cognizable claim under the
6 APA, Federal Respondents request an opportunity to file a motion to dismiss that claim under the
7 time to respond provided by Fed. R. Civ. P. 12(a)(2) instead of the expedited schedule for a
8 habeas petition.

9 **V. CONCLUSION**

10 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
11 the Petition and dismiss this matter.

12
13 DATED this 18th day of July, 2025.

14 Respectfully submitted,

15 TEAL LUTHY MILLER
16 Acting United States Attorney

17 *s/ Sean M. Arenson*

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*I certify that this memorandum contains 1,202
words, in compliance with the Local Civil Rules.*