District Judge Marsha J. Pechman
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G.S., Petitioner, v. **Cammila Wamsley**, et al., Respondents.	Case No. 2:25-cv-01255-MJP-TLF **PETITIONER'S RESPONSE TO RESPONDENTS' RETURN** ORAL ARGUMENT REQUESTED Noted for consideration: September 24, 2025

I. CUSTODY STATUS

On September 5, 2025, pursuant to this Court's Order, Petitioner was released from immigration detention, and he returned to his home in Stayton, Oregon. Dkt. #30 at p. 2. Removal proceedings under 8 U.S.C. § 1229a remain ongoing, and Petitioner is awaiting the scheduling of his asylum hearing in Portland, Oregon. Respondents have not yet returned Petitioner's case to

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the jurisdiction of the Portland Immigration Court, as required by the Court's September 5, 2025 Order. *See* Dkt. #30 at p. 2.

II. CASE OVERVIEW

Petitioner is an asylum applicant with no criminal history. Petitioner has maintained full compliance with restrictions placed on him by US Department of Homeland Security (DHS) officials since he was initially detained and released on his own recognizance on June 13, 2024, pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. § 1236.1(c)(8). Removal proceedings under 8 U.S.C. § 1229a are ongoing and Petitioner has an I-589 asylum application pending with the immigration court. *See* Dkt. #28-2 at p. 2.

On June 24, 2025, Petitioner was unlawfully re-detained by Respondents when he appeared at Respondent's Eugene, Oregon field office for his previously scheduled check in appointment. Dkt. #26-3 at p. 2. In re-detaining Petitioner pursuant to § 1226(a), Respondents violated Petitioner's right to Procedural and Substantive Due Process by failing to make an individualized determination of flight risk or danger to the community prior to re-detaining Petitioner, and by subjecting Petitioner to civil immigration detention without a lawful purpose. All that Respondents did to explain Petitioner's re-detention was to note on form I-213 that Petitioner did not have a hearing scheduled and that Petitioner's asylum application indicated he had traveled through the United Kingdom and Canada prior to entering the United States. Dkt. #26-5 at p. 4.

Since his re-detention on June 24, 2025, Petitioner twice sought a bond or custody redetermination hearing with the immigration court in Tacoma, Washington, and each time the

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immigration court found that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). Dkt. #26-8 at p. 2; Dkt. #26-9 at p. 2.

On August 27, 2025, Respondents filed a return and motion to dismiss, primarily arguing that Petitioner is (was) subject to mandatory detention under 8 U.S.C. § 1225(b), and that the Court should require Petitioner to seek an administrative appeal of the Tacoma immigration court's decision finding him subject to mandatory detention to the Board of Immigration Appeals (BIA) prior to seeking habeas relief. See Dkt. #24 at p. 6-8. Notably, Respondents did not provide any justification for Petitioner's unlawful detention on June 24, 2025. *Id.* at p. 6, ¶ 2.

On September 5, 2025, the Court granted Petitioner's unopposed motion for a temporary restraining order, and Petitioner was released from immigration detention. Dkt. #30 at p. 1-2.

Also on September 5, 2025, the BIA issued a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 227-228 (BIA 2025), in which it concluded that all noncitizens who have not been admitted or paroled are subject to mandatory detention under 8 U.S.C. § 1225(b). As a result, an appeal to the BIA would be futile.

III. ARGUMENT

A. Petitioner's substantive and procedural due process rights were violated by Respondents when they re-detained him without cause on June 24, 2025.

"No person shall be … deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The right to due process of law applies to all persons in the United States regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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To be lawful, civil immigration detention requires a valid purpose. In general, courts have recognized two valid purposes for immigration detention – 1) flight risk and 2) danger to the community. *See Zadvydas*, 533 U.S. at 690-691. Immigration detention may not be used as punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest quota is not a valid purpose for detaining a noncitizen. Respondents are violating Petitioner's due process rights by detaining him without a valid purpose and without a pre-detention procedure to determine flight risk or danger to the community.

To determine what procedures are constitutionally necessary to protect a liberty interest, courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1 (W.D. Wash. Aug. 19, 2025) (collecting cases). The *Mathews* test requires balancing the private interest affected by government action, the risk of an erroneous deprivation through the procedures used and the probable value of additional safeguards, and finally the government interest, including the function and the burden of additional measures. *Mathews*, 424 U.S. at 335. "[D]ue process requires the government to identify some interest beyond its own administrative practices to justify depriving an individual of her liberty without any pre-deprivation protections. Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 5:25-cv-05632-PCP *10 (N.D. Cal. Jul 24, 2025).

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Once a noncitizen has satisfied a DHS officer that he is not a flight risk or danger to the community and he is released from immigration custody, he may not be re-detained absent an individualized determination that circumstances have changed to such an extent that the noncitizen may now constitute a flight risk or danger to the community. *See Saravia v. Sessions,* 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2017*), aff'd sub nom. Saravia for A.H. v. Sessions,* 905 F.3d 1137 (9th Cir. 2018*)*; *Ortiz Calderon v. Kaiser*, 25-cv-06695-AMO (N.D. Cal. Aug 22, 2025), https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-cand-3_25-cv-06695-1; *Panosyan v. Mayorkas*, 854 F. App's 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

Here, Respondents first determined that Petitioner was not a flight risk or a danger to the community and released him on his own recognizance on June 13, 2024. Dkt. #26-3 at p. 2; 8 C.F.R. § 1236.1(c)(8). At that point, Petitioner had a protected liberty interest in being free from detention. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019). In full compliance with the conditions placed upon him by Respondents, Petitioner attended his scheduled appointment at the ICE field office in Eugene, Oregon on June 24, 2025, where he was re-detained by Respondents. Dkt. #26-7 at p. 2. Respondents did not make an individualized determination that circumstances have changed such that Petitioner is either a flight risk or a danger to the community. Dkt. #26-5 at p. 4. Respondents violated Petitioner's constitutionally protected liberty interest by unlawfully detaining him on June 24, 2025. *See Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at

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33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and Order at 29-31).

Petitioner is not a flight risk or danger to the community. Yet, in spite of a clear record that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) – and not 8 U.S.C. § 1225(b) -the Tacoma immigration court has determined Petitioner is subject to mandatory detention and is not eligible for release from custody. Dkt. #26-8 at p. 2; Dkt. #26-9 at p. 2; Dkt. 26-6 at p. 2; Dkt. #26-7 at p. 2; *Rodriguez v. Bostock*, N. 25 Civ. 524, 2025 WL 1193850, at *12-16 (W.D. Wash. April 24, 2025). While an administrative appeal to the Board of Immigration Appeals (BIA) is permitted, it is not required for purposes of this action. *See Hernandez v. Sessions*, 872 F.3d 976, 988-989 (9th Cir. 2017) (waiving prudential exhaustion requirement for BIA appeal of bond decision).

In short, Petitioner is (was) unlawfully detained and there is (was) no legal justification for his detention.

B. There is no administrative avenue available to remedy Petitioner's unlawful detention.

"Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause [Due Process] protects." *Zadvydas*, 533 U.S. at 590. Petitioner is (was) unlawfully detained, and his constitutional rights were violated by Respondents unlawfully re-detaining him without conducting a pre-detention individualized determination of changed circumstances sufficient to demonstrate Petitioner is either a flight risk or a danger to the community. *See* Dkt. #26-5 at p. 4.

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While not a true remedy for a constitutional violation, ordinarily an individual detained under 8 U.S.C. § 1226(a) is able to request a custody redetermination (bond) hearing before an immigration judge. 8 C.F.R. § 1236.1(d)(1). However, on September 5, 2025, the BIA, in a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), concluded that individuals like Petitioner, who have not previously been inspected and admitted or paroled, are subject to mandatory detention under 8 U.S.C. § 1225(b), regardless of how long the person has been in the United States. *Id.* at 227-228. In so holding, the BIA misconstrued the Supreme Court's analysis in *Jennings v. Rodriguez*, 583 U.S. 281, 287-288 (2018), and failed to address the temporal component of the statutory term "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A); *Lopez-Campos v. Rayfield, et al.*, Case No. 2:25-cv-12486, Opinion and Order Granting Writ of Habeas Corpus, 2025 WL 2496379 *15-18 (E.D. Mich. Aug.29, 2025). The BIA's decision in *Yajure Hurtado* forecloses any possibility that Petitioner would prevail in an appeal to the BIA. *Yajure Hurtado*, 29 I&N Dec. at 216 ("Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission").

Because there is no longer any chance that an unlawful or unconstitutional violation occurring when an individual released under § 1226(a) is re-detained would be remedied by a prompt bond hearing before an immigration judge, it is crucial that Respondents respect Petitioner's due process rights under the United States Constitution. U.S. Const. amend. V.

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IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court issue a writ of habeas corpus, ordering Respondents to refrain from re-detaining Petitioner absent a pre-detention hearing in which Respondents have the burden of demonstrating changed circumstances sufficient to prove Petitioner is either a flight risk or a danger to the community.

DATED this 11th day of September 2025

Respectfully submitted,

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Counsel for Petitioner

I certify that this memorandum contains 1,873 words, in compliance with the Local Civil Rules

CERTIFICATE OF SERVICE

I hereby certify that I filed a copy of the foregoing Petitioner's Response to Respondents' Return and Motion to Dismiss electronically through the CM/ECF system, which gave service to all counsel of record.

Dated this 11th day of September 2025

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