

The Honorable Ricardo S. Martinez
The Honorable Michelle L. Peterson

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

WILMER ENRIQUE QUIVA PALACIO,

Petitioner,

v.

LAURA HERMOSILLO,¹ Seattle Acting Field
Office Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement, *et al.*,

Respondents.

Case No. 2:25-cv-01983-RSM-MLP

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Petitioner Wilmer Enrique Quiva Palacio seeks a writ of habeas corpus requiring Federal Respondents to release him from custody immediately (and enjoining his re-detention while his removal proceeding is pending absent written notice and a hearing). Dkt. 1. Federal Respondents have released Petitioner from detention at the Northwest ICE Processing Center, albeit with a new restriction of an ankle monitor. Zamora Decl., ¶ 3.

¹ Laura Hermosillo, Seattle Acting Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement is substituted for Camilla Wamsley, pursuant to Fed. R. Civ. P. 25(d).

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 **I. FACTUAL BACKGROUND**

2 Petitioner Wilmer Enrique Quiva Palacio is a native and citizen of Venezuela, who arrived
3 in the United States on or around October 26, 2021, near Eagle Pass, Texas. Dkt. 4-2. The
4 Department of Homeland Security (“DHS”) issued him a Notice to Appear on October 28, 2021,
5 charging him with inadmissibility pursuant to INA § 212(a)(6)(A)(i) as a noncitizen present in the
6 United States without being admitted or paroled. *Id.* On the same date, Petitioner was released on
7 an Order of Release on Recognizance. Dkt. 4-4. DHS arrested Petitioner on or around August 8,
8 2025, and detained him at the Northwest ICE Processing Center. Dkt. 1, ¶ 3. Two months later, on
9 October 14, 2025, Petitioner filed this habeas petition. Dkt. 1. On October 15, 2025, Petitioner was
10 released from DHS custody on an Order of Release on Recognizance and ankle monitor. Zamora
11 Decl., ¶ 3; Strong Decl., Ex. 1; *see also* Dkt. 8.

12 **II. POINTS AND AUTHORITIES**

13 **A. Jurisdiction**

14 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
15 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that he or she is in
16 custody and that custody is in violation of the Constitution, laws, or treaties of the United States.
17 *See* 28 U.S.C. § 2241(c)(3). “For a habeas petition to continue to present a live controversy after
18 the petitioner’s release ... there must be some remaining ‘collateral consequence’ that may be
19 redressed by success on the petition.” *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007).

20 Petitioner has not amended his petition to address either his release or state what “collateral
21 consequences” remain for this Court to consider post-release. In *Abdala*, the Ninth Circuit cited
22 with approval the Tenth Circuit’s holding that “a petitioner’s release from detention under an order
23 of supervision ‘moot[ed] his challenge to the legality of his extended detention.’” *Id.* at 1064
24 (quoting *Riley v. INS*, 310 F.3d 1253, 1256-57 (10th Cir. 2002)); *see also* *Babak v. ICE Field*

1 *Office Director*, No. 20-212-RSM-BAT, 2020 WL 1976798, at *1 (W.D. Wash. Mar. 31, 2020),
2 *report and recommendation adopted by*, 2020 WL 1974335, at *1 (W.D. Wash. Apr. 24, 2020)
3 (dismissing habeas petition as moot after ICE released petitioner on supervision).

4 **B. Due process**

5 Petitioner's release with an ankle monitor does not violate his substantive and procedural
6 due process rights.

7 **1. Substantive due process**

8 Title 28 section 1226(a) provides that "an alien *may* be arrested and detained pending a
9 decision on whether the alien is to be removed from the United States." (emphasis added). "To
10 secure release, the alien must show that he does not pose a danger to the community and that he is
11 likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021)
12 (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA
13 1999)). If DHS decides to release the noncitizen, it may place other conditions on release. *See* 8
14 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). The fact that ICE made an initial determination that
15 Petitioner was appropriate for an Order of Release on Recognizance in 2021 does not prevent ICE
16 from later amending the conditions of the release to add an ankle monitor.

17 **2. Procedural due process**

18 "Due process is flexible and calls for such procedural protections as the particular situation
19 demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
20 Petitioner's release is consistent with his due process rights. Under *Mathews*, "[t]he fundamental
21 requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful
22 manner." *Id.* at 333 (internal quotation marks omitted). This calls for an analysis of (1) "the private
23 interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of
24

1 such interest through the procedures used, and probable value, if any, of additional or substitute
2 procedural safeguards,” and (3) the Government’s interest. *Id.* at 334-35.

3 **a. Petitioner’s liberty interest**

4 Respondents recognize the “weighty liberty interests implicated by the Government’s
5 detention of noncitizens.” *Reyes v. King*, No. 19-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug.
6 20, 2021). Nevertheless, “the recognized liberty interests of U.S. citizens and aliens are not
7 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress
8 may make rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v.*
9 *Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).
10 As the Supreme Court has explained, “[i]n the exercise of its broad power over naturalization and
11 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”
12 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Here, Petitioner is not in custody; he has been
13 released albeit it with an ankle monitor. *Zamora Decl.*, ¶ 3.

14 **b. The existing procedures are constitutionally sufficient**

15 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
16 of Petitioner’s liberty here is minimal. Noncitizens do not have a right to a hearing before an
17 immigration judge *before* they are detained under Section 1226(a). Likewise, there is no
18 requirement for such a hearing before re-detention after revocation of release. The Supreme Court
19 has warned courts against reading additional procedural requirements into the INA. *See Johnson*
20 *v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing
21 requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts ... are generally not free to
22 impose [additional procedural rights] if the agencies have not chosen to grant them”) (quoting
23 *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978)
24 (cleaned up)). While Petitioner cites cases where courts in this district have held that due process

1 requires a pre-deprivation hearing, each of those cases concerned detainees who were presently
2 detained, not who have been subsequently released. Dkt. 1, ¶ 5. Going forward, if Petitioner were
3 to be re-detained, he may seek a custody redetermination before an IJ through the substantial
4 procedural protections afforded to him under Section 1226(a). *Rodriguez Diaz*, 53 F.4th at 1193.

5 **c. The Government's interest**

6 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the test “must
7 account for the heightened government interest in the immigration detention context.” *Rodriguez*
8 *Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth Circuit in
9 *Rodriguez Diaz* recognized that “the government clearly has a strong interest in preventing aliens
10 from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208
11 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to determining whether
12 removable aliens must be released on bond during the pendency of removal proceedings.” *Id.*

13 **III. CONCLUSION**

14 In further response to Dkt. 9, Federal Respondents do not believe that an evidentiary
15 hearing is necessary.

16 Dated this 21st day of November, 2025.

1 Respectfully submitted,

2 CHARLES NEIL FLOYD
3 United States Attorney

4 *s/ James C. Strong*

5 JAMES C. STRONG, WSBA No. 59151

6 Assistant United States Attorney

7 United States Attorney's Office

8 Western District of Washington

9 700 Stewart Street, Suite 5220

10 Seattle, Washington 98101-1271

11 Phone: 206-553-7970

12 Fax: 206-553-4067

13 Email: james.strong@usdoj.gov

14 *Attorneys for Federal Respondents*

15 *I certify that this memorandum contains 1,219*
16 *words in compliance with the Local Civil Rules*