District Judge Kymberly K. Evanson

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

MIGUEL ALFONSO SIRA-HURTADO, Petitioner, v. LAURA HERMOSILLO,[1] *et al.*, Respondents.	Case No. 2:25-cv-02173-KKE FEDERAL RESPONDENTS'[2] RETURN MEMORANDUM Noted for consideration on: November 21, 2025

I. INTRODUCTION

This Court should deny Petitioner Miguel Alfonso Sira-Hurtado's Petition for a Writ of Habeas Corpus. Dkt. 1. In the Petition, Sira-Hurtado challenges his immigration detention at the Northwest ICE Processing Center ("NWIPC"). Specifically, he claims that the procedures used prior to his redetention by U.S. Immigration and Customs Enforcement's ("ICE") violate procedural due process. But Sira-Hurtado's arguments ignore the reality that his redetention is

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Laura Hermosillo for Cammilla Wamsley.

[2] 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

mandatory pursuant to 8 U.S.C. § 1225(b). *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025); *Matter of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025).

Sira-Hurtado is a Venezuelan citizen who was initially apprehended while entering the United States without inspection in November of 2023. He was issued a notice to appear and then was released on recognizance with a future immigration court date. At a June 2025 court appearance, an immigration judge granted the Department of Homeland Security's ("DHS") motion to dismiss Sira-Hurtado's removal proceedings. ICE then took him into custody and served him with a Notice and Order of Expedited Removal. As an expedited removal, Sira-Hurtado's detention became mandatory pursuant to 8 U.S.C. § 1225(b)(1). Thus, a hearing before a neutral decisionmaker prior to his redetention would have been futile in addition to not being required by any statute or regulation.

II. BACKGROUND

A. 8 U.S.C. § 1225(b)

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).

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

1. Section 1225(b)(1)

Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen "described in" Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security – that is, any noncitizen not "admitted or paroled into the United States" and "physically present" fewer than two years – who is inadmissible under Section 1182(a)(7) at the time of "inspection." *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under Section 1225(a)(3), that noncitizen lacks entry documents and so is subject to Section 1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of noncitizens as subject to expedited removal is subject to his or her "sole and unreviewable discretion." 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass'n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables the Department of Homeland Security ("DHS") "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously

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

for the two-year period immediately preceding the date of the determination of inadmissibility," who were not otherwise covered by prior designations. *Id.*, at 8139-40.

Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[3] or expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from removal under Section 1229a. Section 1229a governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower, statutorily defined circumstances – typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry – and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

[3] Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.* § 1558(a)(2)(D).

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

2. Section 1225(b)(2)

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section 1225(b)(2), 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. § 1225(b)(2)(A). While Section 1225 does not provide for noncitizens to be released on bond, DHS has the sole discretionary authority to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.*, § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Petitioner Sira-Hurtado

Petitioner Sira-Hurtado is a native and citizen of Venezuela who illegally entered the United States without inspection and was apprehended near the United States – Mexico border in November 2023. Pet., ¶ 26; Benjamin Decl., ¶ 4. Border Patrol issued Sira-Hurtado a notice to appear, placing him into removal proceedings, and then released him on an Order of Release on Own Recognizance ("OREC") due to a lack of bedspace. Pet., ¶ 26; Benjamin Decl., ¶¶ 6-7; Lambert Decl., Ex. A, OREC.

On June 3, 2025, Sira-Hurtado appeared for an immigration hearing at the immigration court in Seattle, Washington. Pet., ¶ 33; Benjamin Decl., ¶ 9. At the hearing, the immigration judge granted DHS's motion to dismiss the removal proceedings without prejudice. Pet., ¶¶ 33, 34; Benjamin Decl., ¶ 9. Following the dismissal of the proceedings, ICE took Sira-Hurtado into custody and served him with a Notice and Order of Expedited Removal Proceedings. Benjamin Decl., ¶ 10; Lambert Decl., Ex. B, Form I-213; Ex. C, Notice and Order.

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

Approximately two weeks later, DHS learned that Sira-Hurtado had been diagnosed with a serious mental disorder or condition. Benjamin Decl., ¶ 11. As a result, DHS filed a motion to reopen Sira-Hurtado's removal proceedings for further findings on his competency. *Id.*; Dkt. No. 1-1, Jacobsen Decl., Ex. D.

On July 3, 2025, Sira-Hurtado filed a notice of appeal with the Board of Immigration Appeals ("BIA") for the June 2025 order dismissing the removal proceedings. Benjamin Decl., ¶ 13. This transferred jurisdiction of Sira-Hurtado's case to the BIA.

On July 7, 2025, the immigration judge denied DHS's motion to reopen because, in part, DHS "fail[ed] to provide any further evidence or argument to support reopening at this time." Dkt. No. 1-1, Jacobsen Decl., Ex. E.

On July 31, 2025, DHS filed a motion to remand and reopen Sira-Hurtado's removal proceedings with the Board of Immigration Appeals ("BIA"). Benjamin Decl., ¶ 16; Lambert Decl., Ex. D, Motion. Likewise, Sira-Hurtado filed a motion to remand his case with the BIA. Benjamin Decl., ¶ 17; Dkt. No. 1-1, Jacobsen Decl., Ex. F. These motions remain pending.

If the proceedings are remanded, DHS will seek further findings on the issue of Sira-Hurtado's competency. If Sira-Hurtado is unrepresented at his remanded proceedings, he may be entitled to certain procedural protections in accordance with an injunction entered in *Franco-Gonzalez v. Holder*, No. 10-cv-2211, 2013 WL 8115423 (C.D. Cal. 2013) (ordering the government to provide bond hearings to class members who have been detained for more than 180 days and legal representation to class members who are incompetent to represent themselves); *see also Franco-Gonzalez v. Holder*, 2014 WL 5475097, 6-12 (C.D. Cal. 2014) (setting forth an evaluation system, including a *pro se* competency standard, to determine whether unrepresented detainees are competent to represent themselves).

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

III. ARGUMENT

A. ICE lawfully detained Petitioner pursuant to 8 U.S.C. § 1225(b).

Congress enacted a multi-layered statutory scheme that provides for the civil detention of noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.*, at 1057.

Aliens who are apprehended shortly after illegally crossing the border and who are determined to be inadmissible due to lacking a visa or valid entry documentation, 8 U.S.C. § 1182(a)(7)(A), may be removed pursuant to an expedited removal order unless they express an intention to apply for asylum or a fear of persecution in their home country. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). "The purpose of these provisions is to expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his or her claim promptly assessed by officers with full professional training in adjudicating asylum claims." H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209 (1996). Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention.

B. The INA precludes this Court's review of DHS's decision to process Sira-Hurtado through expedited removal.

The INA precludes review here. The INA strips district courts of jurisdiction to review Sira-Hurtado's redetention claim because it arises from DHS's decision to commence removal proceedings by processing him as an expedited removal. 8 U.S.C. § 1252(g). Congress has spoken clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of

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

law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g).

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly-enacted Section 1252(g) that:

> Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides that:

> Except as provided in this section and notwithstanding any other provision of law, *(statutory or nonstatutory), including section 2241 of Title 28*, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (2017) (emphasis added).

In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (original emphasis). Because Sira-

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

Hurtado's detention is a necessary result of DHS's decision to process him through expedited removal, Section 1252(g) bars this Court's review.

C. Sira-Hurtado's detention comports with procedural due process.

Sira-Hurtado's detention does not violate his procedural due process rights. He asserts that due process requires the Government to provide him with "written notice and a pre-deprivation hearing before a neutral decision maker to determine whether redetention is warranted based on danger or flight risk." Pet., ¶ 61. This fails to take into account that his redetention was triggered for the purposes of expedited removal processing. Aliens subject to expedited removal are mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1). Thus, while Sira-Hurtado may have initially been released pursuant to DHS's discretion on an OREC, it is clear that his redetention after his removal proceedings had been dismissed did not allow for such discretion.

Courts in this district have found that due process requires a pre-deprivation hearing prior to the revocation of an OREC. *See, e.g.*, *E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). However, this Court should assess the facts here independently as "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

The *Mathews* test demonstrates that Sira-Hurtado's detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This 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.

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

1. Liberty Interest.

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, Sira Hurtado's interest in his liberty *generally* does not mean that he possesses a separate or heightened liberty interest in the continuation of his conditional release.

But while many courts have recognized that non-citizens released from immigration detention have a protected liberty interest in remaining out of custody, *see* Pet, ¶ 55 (collecting cases), the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. After all, "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: 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.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523.

While Sira-Hurtado has some liberty interest in his continued freedom from detention after being released from custody, that interest is tempered by the relatively short period of time that he was released (less than two years), the fact that his initial removal proceedings were dismissed before redetention, and the fact that he qualified for expedited removal processing at the time of

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

his redetention. Under expedited processing, Sira-Hurtado is not eligible for release from detention.

2. The existing procedures are constitutionally sufficient.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Sira-Hurtado's liberty here is minimal. Noncitizens have no right to a hearing before an immigration judge under Section 1225(b). Sira-Hurtado does not dispute that he may be lawfully processed for expedited removal. He concedes that he was apprehended at the border shortly after entering the United States without inspection or parole. Pet., ¶ 26. He does not dispute that he was not present in the United States for two years prior to his inadmissibility determination. *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139-40 (Jan. 24, 2025). Thus, he is subject to expedited removal and mandatory detention under 8 U.S.C. § 1225(b)(1).

Moreover, there is no requirement for such a hearing before re-detention after revocation of release. The Supreme Court has warned courts against reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). As for Sira-Hurtado's claim that he is entitled to a full hearing before he may be re-detained, that is simply more than due process requires in this case. The very nature of expedited removal does not comport with a requirement for a pre-deprivation hearing and additional process as demanded by Sira-Hurtado.

//

//

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

3. The Government has a strong interest in the expedited removal of aliens lacking a legal basis to remain in the United States

Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at 1208. As described above, Sira-Hurtado belongs to the subset of noncitizens that Congress categorized for expedited removal. Congress specifically limited the process available to such noncitizens because of the Government's interest in removing noncitizens, such as Sira-Hurtado, who are apprehended shortly after crossing the border expeditiously.

In short, the three *Mathews* factors demonstrate that Sira-Hurtado's detention comports with procedural due process.

IV. CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

//

//

//

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

DATED this 17th day of November, 2025.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 3,300 words, in compliance with the Local Civil Rules.