

District Judge Ricardo S. Martinez
Magistrate Judge Michelle L. Peterson

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

PUI SUN HO,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:25-cv-02222-RSM-MLP

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
November 18, 2025

I. INTRODUCTION

The circumstances surrounding Petitioner Pui Ho Sun's removal proceedings do not alter the controlling legal framework that governs ICE's lawful authority to detain him. The law is unequivocal: ICE "shall take into custody" noncitizens subject to a Notice to Appear ("NTA") pursuant 8 U.S.C. § 1226(c) (detention of criminal aliens) for the duration of those proceedings. Despite this command, U.S. Immigration and Customs Enforcement ("ICE") exercised its discretion to grant Petitioner an Order of Release on Recognizance ("OREC"). Following a final removal order in early 2025, months before his re-detention, the government's statutory obligation

1 to detain him revived, and he has now lawfully been held under mandatory detention provisions
2 for approximately nine days.

3 Petitioner's habeas petition should be denied. None of the cases Petitioner cites regarding
4 notice address a situation: (1) where Petitioner was detained pursuant to 1226(c), (2) where
5 Petitioner's final removal order created a change in circumstance warranting detention, (3) where
6 Petitioner had *months* between his prior removal order and re-detention, and (4) where Petitioner
7 was re-detained pursuant to those change in circumstances (i.e., a final removal order). Under these
8 facts, Petitioner *was* provided notice—namely, that his removal order had become final— thus his
9 authorities provide no support for the relief he seeks. Indeed, Congress has mandated detention
10 under both sections §1226(c) and §1231 and denied notice for parole revocation or expiration,
11 expressly foreclosing Petitioner's alleged right to notice here. Petitioner's detention is
12 presumptively reasonable—not unconstitutionally indefinite. *See Zadvydas v. Davis*, 533 U.S. 678,
13 701 (2001).

14 II. FACTUAL AND PROCEDURAL BACKGROUND

15 A. Detention Authorities and Removal Procedures

16 The INA governs the detention and release of noncitizens during and following their
17 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
18 detention periods are generally referred to as “pre-order” (meaning before the entry of a final order
19 of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal).
20 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order
21 detention).

22 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
23 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
24 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen's presence for

1 removal and to protect the community from noncitizens who may present a danger, Congress has
2 mandated detention while removal is being effectuated:

3 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
4 [noncitizen]. Under no circumstance during the removal period shall the [Secretary]
5 release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or
6 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B)
7 of this title.

8 8 U.S.C. § 1231(a)(2).

9 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
10 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
11 and does not place any temporal limit on the length of detention under that provision:

12 [A noncitizen] ordered removed who is inadmissible under section 1182,
13 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
14 who has been determined by the [the Secretary of Homeland Security] to be a risk
15 to the community or unlikely to comply with the order of removal, *may* be detained
16 *beyond the removal period* and, if released, shall be subject to the terms of
17 supervision in paragraph (3).

18 8 U.S.C. § 1231(a)(6) (emphasis added).

19 During the removal period, ICE² is charged with attempting to effect removal of a
20 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
21 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be
22 detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from
23 the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
24 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

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¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security (“DHS”), of which ICE is a component. *See also* 6 U.S.C. § 251.

² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

B. Petitioner Pui Sun Ho

Petitioner was admitted to the U.S. as a conditional Lawful Permanent Resident on September 2, 1993. Declaration of Yrales Melendez (Melendez Decl.) ¶ 5. His conditions were removed in 1995. *Id.* Petitioner was convicted on January 7, 2009, of Delivery of a Controlled Substance (cocaine) in violation of Oregon Revised Statutes 475.880. *Id.* ¶ 8. Petitioner was issued his first Notice to Appear (“NTA”) in 2013, charging him with an aggravated felony 237(a)(2)(A)(iii), to wit 101(a)(43)(B) (drug trafficking). *Id.* ¶ 10. He was ordered removed by an Immigration Judge (“IJ”) on October 1, 2013, and waived appeal. *Id.* ¶ 12. Petitioner was removed from the United States on September 26, 2018. *Id.* ¶ 13.

On April 9, 2019, the Board of Immigration Appeals (“BIA”) granted a sua sponte motion to reopen and terminated proceedings without prejudice. *Id.* ¶ 14. This restored Petitioner to Lawful Permanent Resident status. *Id.* ¶ 15.

Petitioner again came to the attention of ICE in May 2022 while in jail for reckless driving and Driving under the Influence (“DUI”). *Id.* ¶ 16. Petitioner was convicted of the DUI in Oregon on July 22, 2022. *Id.* He was issued a new NTA on November 17, 2022, charging him with removability pursuant to § 237(a)(2)(B)(i) (controlled substance conviction) and § 237(a)(2)(B)(ii) (drug abuser) based on the 2009 conviction. *Id.* ¶ 18. He was released on an OREC. Petitioner, through counsel, denied the charges of removability. *Id.* ¶ 19. The IJ subsequently sustained the 237(a)(2)(B)(i) charge. *Id.* ¶ 20. Petitioner filed a motion to terminate removal proceedings in immigration court. *Id.* ¶ 21. Following briefing and testimony, the IJ denied the motion to terminate, denied relief and ordered Petitioner removed on January 1, 2025. *Id.* ¶ 23. Petitioner’s case is currently pending appeal at the BIA. *Id.* ¶ 24.

1 Because Petitioner's case status had changed from pre-removal to post-removal order,
2 Petitioner's OREC was revoked and he was taken into custody pursuant to 8 U.S.C. § 1231, which
3 requires mandatory detention. *See* 8 U.S.C. §1231 (a)(2)(A).

4 III. LEGAL STANDARD

5 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
6 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her
7 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
8 § 2241(c)(3).

9 IV. ARGUMENT

10 A. ICE lawfully detained Petitioner pursuant to 8 U.S.C. § 1231.

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

15 Congress has determined that all aliens subject to Section 1231 are subject to mandatory
16 detention. Petitioner's detention here under Section 1231 without a pre-detention hearing was thus
17 lawful. The fact that Petitioner had initially been released by ICE on OREC does not change this
18 fact. There is no statutory or regulatory requirement that a noncitizen be provided with a pre-
19 detention hearing before re-detention. ICE's authority to re-arrest is not limited to circumstances
20 where a material change in circumstances has occurred. However, here, a material change in
21 circumstances *had* occurred. Petitioner was released on OREC while his awaiting an Immigration
22 Judge's decision on removal. This year, an IJ issued such a decision, ordering Petitioner removed.
23 The facts here are simple: Petitioner was subject to mandatory detention under §1226(c), Petitioner
24 was granted discretionary OREC, Petitioner was subsequently ordered removed by an IJ, and the

1 final removal order constituted a material change in circumstances warranting revocation of
2 Petitioner's OREC.

3 **B. ICE had cause to revoke Petitioner's release.**

4 ICE's reliance on Petitioner's change in circumstances ordering him removed as the basis
5 for Petitioner's re-detention is lawful. ICE must be able to detain aliens prior to removal.

6 Furthermore, Petitioner, represented by counsel, was on notice both that his removal order
7 had become final *and* that such a removal order constituted a change in circumstances that likely
8 would impact his OREC. ICE does not have the resources to immediately detain every person the
9 moment their immigration removal orders are issued. Thus, it is not unreasonable for them to have
10 detained Petitioner months after his removal order. Further, there is no evidence that Petitioner
11 was harmed by ICE permitting him extra months on OREC prior to his re-detention. Accordingly,
12 the evidence provides an overwhelmingly reasonable basis and cause for Petitioner's re-detention.

13 **C. Petitioner's detention comports with due process.**

14 Petitioner's detention does not violate his substantive and procedural due process rights.
15 First, Petitioner alleges that there is no legitimate government interest in his detention. Pet,
16 pgs. 11-14. Here, Petitioner's OREC was granted for a limited period of time pending a
17 determination on his removal proceedings, and then he was subject to re-detention. ICE's
18 allowance for Petitioner to continue on OREC approximately ten months past Petitioner's removal
19 date does not somehow negate the change in circumstance created by his removal order. Petitioner
20 was on notice that the removal order had become final, and that such an order created a change in
21 circumstance in his case.

22 **1. Substantive Due Process**

23 ICE has a legitimate interest in Petitioner's detention. For more than a century, the
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1 immigration laws have authorized immigration officials to charge aliens as removable from the
2 country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See*
3 *Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960)
4 (discussing longstanding administrative arrest procedures in deportation cases). “Detention during
5 removal proceedings is a constitutionally valid aspect of the deportation process.” *Velasco Lopez*
6 *v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*,
7 538 U.S. at 523 n.7 (“prior to 1907 there was no provision permitting bail for any aliens during
8 the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952)
9 (“Detention is necessarily a part of [the] deportation procedure.”). Indeed, removal proceedings
10 ““would be in vain if those accused could not be held in custody pending the inquiry into their true
11 character.”” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235
12 (1896)).

13 Congress has determined that all aliens subject to Section 1231 are subject to mandatory
14 detention. Petitioner’s detention here under Section 1231 without a pre-detention hearing was
15 lawful. This alone is sufficient justification—and notice—for ICE to re-detain Petitioner.

16 Further, the fact that ICE made an initial determination that Petitioner could be released on
17 OREC does not prevent ICE from later revoking that OREC. ICE has the clear discretionary
18 authority to revoke OREC. ICE made an individual determination to revoke Petitioner’s OREC
19 because of the change in circumstances created by his final removal order. Melendez Decl. ¶¶ 23,
20 25.

21 2. Procedural Due Process

22 “Due process is flexible and calls for such procedural protections as the particular situation
23 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
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Petitioner'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.

a. Liberty Interest.

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, Petitioner'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. Moreover, Petitioner does not have a liberty interest in participating in OREC. Pet., pg. 15.

"The 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*, 538 U.S. at 522). 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.

Petitioner's release was always subject *both* to conditions of release and subject to remain in place for "pendency of his removal proceedings." Pet. ¶ 34. Petitioner knew that he could be re-

1 detained if he violated the conditions of his parole or if his removal proceedings were no longer
2 pending. *Id.* Accordingly, Petitioner cannot claim that the government promised him ongoing
3 freedom.

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

5 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
6 of Petitioner's liberty here is minimal. First, noncitizens have no right to a pre-deprivation hearing
7 before an immigration judge under Section 1231, and Petitioner *was* given a hearing for his
8 removal proceedings where he was represented by counsel. Malendez Decl. ¶¶ 19-23. Likewise,
9 there is no requirement for a hearing before re-detention after revocation of release. The Supreme
10 Court has warned courts against reading additional procedural requirements into the INA. *See*
11 *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing
12 requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to
13 impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting
14 *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978)
15 (cleaned up)).

16 Second, Petitioner had notice that his OREC was only for the duration of the "pendency of
17 his removal proceedings" and an IJ ordering his removal could lead to his re-detention when he
18 agreed to the program. Pet. ¶ 34. Further, Petitioner's circumstances are vastly different than those
19 presented in *E.A.T.-B.* *See E.A. T.-B. v. Wamsley*, --- F. Supp. 3d ---, No. C25-1192-KKE, 2025 WL
20 2402130 (W.D. Wash. Aug. 19, 2025) and in *Ramirez Tesara*, --- F. Supp. 3d ---, No. 2:25-cv-
21 01723-MJP-TLF, 2025 WL 2637663, *2–3 (W.D. Wash. Sep. 12, 2025); *Kumar v. Wamsley*,
22 No. 2:25-cv-01772-JHC-BAT, 2025 WL 2677089, *2–3 (W.D. Wash. Sept. 17, 2025). In both
23 those cases, Petitioners argued definitively that a *lack* of change in circumstances warranted a pre-
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1 deprivation here. Here however, Petitioner *had* exactly the kind of material change in
2 circumstances warranted re-detention (i.e., a final removal order) Melendez ¶¶ 19-23. This case
3 therefore presents vastly different circumstances that that in *E.A.T-B* or *Ramirez Tesara*. Petitioner
4 in this case admits he was only permitted OREC “during the pendency of his removal
5 proceedings.” Pet. ¶ 34. However, Petitioner’s removal proceedings were no longer pending.
6 Melendez Decl. ¶¶ 19-23. Petitioner was acutely aware that his removal proceedings were no
7 longer pending because he was represented by counsel and filed an appeal with the BIA. *Id.*

8
9 **c. The Government has a strong interest in returning noncitizens to
custody who are subject to a final removal order.**

10 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
11 test “must account for the heightened government interest in the immigration detention context.”
12 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
13 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
14 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
15 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to
16 determining whether removable aliens must be released on bond during the pendency of removal
17 proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an even greater
18 interest in detaining citizens subject to a final order of removal.

19 In short, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
20 procedural due process.

21 **D. Petitioner’s detention is not indefinite or unconstitutionally prolonged**

22 Petitioner has not demonstrated that his detention has become “indefinite” or
23 unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended
24 duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit

1 limitation of post-removal detention “to a period reasonably necessary to bring about that alien’s
2 removal from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified that Section
3 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no longer reasonably
4 foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

5 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of
6 burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.*
7 (stating that “for detention to remain reasonable, as the period of post-removal confinement grows,
8 what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). However,
9 the Supreme Court determined that it is “presumptively reasonable” for the Government to detain
10 a noncitizen for six months following entry of a final removal order, while it worked to remove
11 the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court implicitly recognized
12 that six months is the *earliest* point at which a noncitizen’s detention could raise constitutional
13 issues. *Id.* Moreover, the Supreme Court noted the six-month presumption “does not mean that
14 every [noncitizen] not removed must be released after six months. To the contrary, [a noncitizen]
15 may be held in confinement until it has been determined that there is no significant likelihood of
16 removal in the reasonably foreseeable future.” *Id.*

17 Here, ICE has detained Petitioner for approximately nine days in total since his order of
18 removal in January 2025. *See* Melendez Decl. ¶ 25. Petitioner’s undisputed nine-day period of
19 detention is presumptively reasonable under *Zadvydas*, 533 U.S. at 701. Because Petitioner’s
20 detention has not exceeded the six-month timeframe, the presumption of reasonableness applies,
21 and there is no basis for release at this time. *Zadvydas*, 533 U.S. at 701.

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V. CONCLUSION

For the foregoing reasons, Petitioner has not satisfied his high burden of establishing entitlement to mandatory injunctive relief, and his Motion should be denied.

DATED this 14th day of November, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,151 words, in compliance with the Local Civil Rules.