

District Judge James L. Robart
Magistrate Judge S. Kate Vaughan

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

ERALDO SIBO AGUILAR,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02231-JLR-SKV

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
January 9, 2026

Petitioner Eraldo Sibó Aguilar, a citizen of Colombia with no legal status in the United States, is currently detained at the Northwest ICE Processing Center (NWIPC). On December 10, 2025, Petitioner Eraldo Sibó Aguilar appeared before the Immigration Judge, withdrew all his pending applications for relief, and requested pre-conclusion voluntary departure. The Immigration Judge granted Petitioner voluntary departure, and ordered Petitioner to depart the United States by January 9, 2026. Petitioner is currently scheduled to be removed to Colombia on January 5, 2026. Despite his representation to the Immigration Judge of his intent to depart the United States voluntarily within the next 28 days, Petitioner continues to pursue release from immigration custody through the instant habeas petition. Accordingly, pursuant to this Court's Order (Dkt. 2), Federal Respondents submit the following factual background as contained in

Petitioner's immigration records, as well as the relevant detention authority. Federal Respondents do not request an evidentiary hearing in this case.

I. LEGAL STANDARD

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

II. DETENTION AUTHORITIES

A. Expedited Removal Proceedings, Mandatory Detention, and Temporary Parole

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). Section 1225 applies to “applicants for admission” to the United States, who are defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).” 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); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

An applicant for admission is subject to expedited removal if, as relevant here, the applicant (1) is inadmissible under 8 U.S.C. § 1182(a)(7)(C) (noncitizens without valid entry documents); (2) has not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (3) is

1 among those whom the Secretary of Homeland Security has designated for expedited removal.
 2 §§1225(b)(1)(A)(i), (iii)(I)–(II).¹ Once “an immigration officer determines” that a designated
 3 applicant is inadmissible under 8 U.S.C. § 1182(a)(7)(C) “the officer [must] order the alien
 4 removed from the United States without further hearing or review.” §1225(b)(1)(A)(i).

5 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
 6 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution,
 7 torture, or return to the noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. §
 8 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the
 9 noncitizen is “removed from the United States without further hearing or review.” 8 U.S.C.
 10 §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f),
 11 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the
 12 noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains
 13 subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV);
 14 *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019). Ultimately, DHS has discretion to pursue
 15 expedited removal under Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M-*
 16 *& L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

17 The sole means of release from detention pursuant to § 1225(b) is temporary parole ‘for
 18 urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S.

20
 21 ¹ The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal
 22 under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to “the
 23 fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).
 24 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 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.

1 at 283. This parole terminates automatically at the expiration of the time for which parole was
2 authorized, or upon service of a charging document for either expedited removal proceedings
3 under § 1225(b) or removal proceedings under § 1229a. 8 C.F.R. 212.5(e)(1); (2)(i). Upon
4 termination of parole, the applicant reverts to the status that he or she had at the time of parole.
5 *See id.*

6 **B. Revocation of Discretionary Release from Detention**

7 8 C.F.R. § 1236.1(c)(8) provides that “[a]ny officer authorized to issue a warrant of
8 arrest may, in the officer’s discretion, release an alien . . . provided that the alien must
9 demonstrate to the satisfaction of the officer that such release would not pose a danger to
10 property or persons, and that the alien is likely to appear for any future proceeding.” Section
11 236.1(c)(9) provides for the revocation of such release: “When an alien who, having been
12 arrested and taken into custody, has been released, such release may be revoked at any time in
13 the discretion of the district director, acting district director, deputy district director, assistant
14 district director for investigations, assistant district director for detention and deportation, or
15 officer in charge (except foreign), in which event the alien may be taken into physical custody
16 and detained.”

17 There is no statutory or regulatory requirement for a hearing before an individual is re-
18 detained, and the Supreme Court has warned courts against reading additional procedural
19 requirements into the Immigration and Nationality Act. *See Johnson v. Arteaga-Martinez*, 596
20 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
21 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural
22 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
23 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

24 Furthermore, DHS is not restricted from rearresting noncitizens absent a change in

1 circumstance. *See Matter of Sugay*, 17 I&N. Dec. 637, 640 (BIA 1981); *see also Saravia v.*
2 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). (“[T]he district court never held that
3 *Sugay* requires these hearings.”). Other courts have recognized that *Sugay*’s dicta is not
4 “binding on ICE.” *Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19
5 (S.D.N.Y. Dec. 27, 2018).

6 Federal Respondents acknowledge that district courts have recently decided that the
7 revocation of an order of recognizance (OREC) requires a pre-detention hearing to determine if
8 that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No.
9 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these
10 decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.*
11 (imposing a determination set forth in Section (c)(8) into the discretionary determination of
12 revoking an OSUP in Section (c)(9)). Both Sections provide that the decisions to release or
13 revoke are discretionary. But Section 1231(c)(8) includes language requiring the officer to decide
14 that the alien “would not pose a danger to property or persons, and that the alien is likely to
15 appear for any future proceeding.” In contrast, Section 1231(c)(9) does not require such a
16 determination and specifically provides that “release may be revoked at any time.”

17 III. FACTUAL BACKGROUND

18 Petitioner is a native and citizen of Colombia, who arrived in the United States on June
19 14, 2022, at or Eagle Pass, Texas, without being admitted or inspected by an immigration
20 officer. Declaration of Christopher Hubbard (Hubbard Decl.), ¶ 3; Declaration of Katherine G.
21 Collins (Collins Decl., Ex. A (Form I-213). He was thereafter processed for expedited removal,
22 and claimed fear of return to Colombia. Hubbard Decl., ¶ 4; Collins Decl., Exhs. A (Form I-
23 213), B (Notice and Order of Expedited Removal). On July 1, 2022, Petitioner was released on
24 humanitarian parole pursuant to 8 C.F.R. § 1182(d)(5)(A), INA § 212(d)(5). Hubbard Decl., ¶ 5;

1 Collins Decl., Exhs. C (Notice of Custody Determination), D (Interim Notice Authorizing
2 Parole). This parole was issued for a period of one year. *See id.*

3 On June 12, 2023, Petitioner filed an affirmative application for asylum, Form I-589,
4 with United States Citizenship and Immigration Services. Hubbard Decl., ¶ 6; Collins Decl.,
5 Exh. E (USCIS Receipt Notice). However, on June 10, 2025, USCIS administratively closed
6 Petitioner's asylum application, finding that immigration court has jurisdiction. Hubbard Decl.,
7 ¶ 7. On September 17, 2025, Petitioner reported to the Seattle ERO office as part of his
8 reporting requirements. Hubbard Decl., ¶ 8; Collins Decl., Exh. F (I-213). Petitioner was taken
9 into custody and transferred to the NWIPC the same day. Hubbard Decl., ¶ 8; Collins Decl.,
10 Exh. G (I-200).

11 USCIS conducted a credible fear interview with Petitioner, and on October 20, 2025,
12 USCIS determined that Petitioner did not have a credible fear of removal to Colombia. Hubbard
13 Decl., ¶ 11. Nevertheless, on November 3, 2025, the Department of Homeland Security issued
14 Petitioner a Notice to Appear, charging him with inadmissibility pursuant to 8 U.S.C. §
15 1182(a)(6)(A)(i) as an present in the United States without being admitted or paroled, and 8
16 U.S.C. § 1182(a)(6)(A)(i), as an alien who is not in possession of a valid entry document.
17 Hubbard Decl., ¶ 12; Collins Decl., Exh. H (NTA).

18 On November 26, 2025, Petitioner filed an asylum application with the Tacoma
19 Immigration Court. Hubbard Decl., ¶ 15. However, on December 10, 2025, at Petitioner's
20 individual calendar hearing where he was to be heard on the merits of his asylum claim,
21 Petitioner appeared before the Immigration Judge, withdrew his pending applications for relief,
22 and requested pre-conclusion voluntary departure. Hubbard Decl., ¶ 19; Collins Decl., Exh. I (IJ
23 Order), The Immigration Judge granted Petitioner voluntary departure, and ordered Petitioner to
24 depart the United States by January 9, 2026. *See id.* If Petitioner does not depart by that day, his

1 grant of voluntary departure will convert to a removal order. Collins Decl., Exh. I (IJ Order).
2 Petitioner is currently scheduled to be removed by ICE to Colombia on January 5, 2026.
3 Hubbard Decl., ¶ 20. At the time of this writing, as the voluntary departure period has not yet
4 lapsed and he is not yet subject to a final order of removal, Petitioner remains mandatorily
5 detained under 8 U.S.C. § 1225(b)(2)(A). *Yajure Hurtado*, 29 I&N Dec. at 220.

6
7 DATED this 12th day of December, 2025

8 Respectfully submitted,

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22 *I certify that this memorandum contains 1,711*
23 *words, in compliance with Local Civil Rules*
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