

District Judge Richard A. Jones
Magistrate Judge Michelle L. Peterson

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

ADOLFO CORTEZ TRINIDAD, *et al.*,

Petitioners,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:25-cv-02246-RAJ-MLP

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
November 24, 2025

I. INTRODUCTION

This Court should deny Petitioners' Petition for a Writ of Habeas Corpus. Dkt. 1. Petitioners assert that the revocation of their conditional parole and resultant immigration detention violate due process. But U.S. Immigration and Customs Enforcement ("ICE") lawfully revoked Petitioners' conditional parole after the agency determined that they had not complied with the conditions of their release. Further, as applicants for admission, Petitioners are properly detained at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b).

II. BACKGROUND

A. 8 U.S.C. § 1225(b)

Applicants for admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by the Attorney General in her discretion. Separately, section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Petitioners are applicants for admission who are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). *See Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025); *Matter of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025).

B. Conditional Parole

When a noncitizen is apprehended, a DHS officer makes an initial custody determination.¹ *See* 8 C.F.R. § 1236.1(c)(8).

Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act; *provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding*. Such an officer may also, in the exercise of discretion, release an alien in deportation proceedings pursuant to the authority in section 242 of the Act (as designated prior to April 1, 1997), except as otherwise provided by law.

¹ Petitioners may incorrectly argue that DHS's initial release and his placement on an OREC in 2023 shows that his detention is discretionary under 8 U.S.C. § 1226(a). However, DHS revisited its legal position on detention and release authorities in July 2025 and determined that Section 1225(b), not Section 1226(a), is the applicable immigration detention authority for all applicants for admission. *See Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *5 (W.D. Wash. Sept. 30, 2025). Petitioners are applicants for admission. 8 U.S.C. § 1225(b)(2).

8 C.F.R. § 1236.1(c)(8) (emphasis added). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 1236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 1236.1(c)(8). This is what happened here when Petitioners were placed on an OREC.

ICE also has clear discretionary authority to revoke conditional parole. 8 C.F.R. § 1236.1(c)(9).

When an alien who, having been arrested and taken into custody, has been released, *such release may be revoked at any time* in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

8 C.F.R. § 1236.1(c)(9) (emphasis added).

C. Petitioners²

Petitioners Adolfo Cortez Trinidad and Jose Cortez Trinidad are brothers, natives and citizens of Mexico who illegally entered the United States without inspection or parole and was apprehended near the United States – Mexico border on June 3, 2024. Decl. of Sheldon A. Benjamin (“Benjamin Decl.”), ¶ 4, 21. On June 6, 2024, Petitioners were originally issued a Form I-860, Notice and Order of Expedited Removal. *Id.*, ¶ 5, 22. That same day, Petitioners both claimed fear of returning to Mexico, and were referred to USCIS for a credible fear interview. *Id.*, ¶ 6, 23. USCIS was unable to interview Petitioners at the time due to lack of

² Due to the expedited briefing schedule, undersigned counsel has not yet received Petitioners’ alien files.

1 interpreter availability, and on June 10, 2024, DHS instead issued Notices to Appear, placing
2 Petitioners into removal proceedings. *Id.*, ¶ 7, 24.

3 The following day, Petitioners were released from DHS custody, and were issued Forms
4 I-220A, Orders of Release on Recognizance (ORECs). *Id.*, ¶ 8, 25; Declaration of Katherine G.
5 Collins (“Collins Decl.”), Exhs. A, B, OREC. The release orders issued to each Petitioner were
6 conditioned on Petitioners complying with many conditions, including that they enroll and
7 participate in an Alternatives to Detention (ATD) program, which involves electronic
8 monitoring, and that they not change their place of residence without first securing permission
9 from ICE. *See id.* The ORECs were signed by both Petitioners, acknowledging that the orders
10 were translated to them into Spanish, and that failure to comply with the terms of the order
11 could result in their detention. Collins Decl., Exhs. A, B, OREC. Despite this, both Petitioners
12 did not comply with the conditions of the ORECs.

13 Soon after Petitioner Adolfo Cortez-Trinidad was released, he began to violate the
14 release order. Beginning on December 19, 2024, and as recent as July 10, 2025, Petitioner
15 Adolfo Cortez-Trinidad failed timely check in *eleven times* as required by the ATD program.
16 Benjamin Decl., ¶ 9-19. On September 23, 2025, Petitioner Adolfo Cortez-Trinidad reported to
17 the ICE ERO Richland office, as required. Collins Decl., Exh. C, I-213 at 2. Because of his
18 multiple ATD violations, ICE took him back into custody for failing to comply with the terms
19 of his release. *Id.*, Benjamin Decl., ¶ 20. ICE then transferred him to the Northwest ICE
20 Processing Center, in Tacoma, Washington, where he remains detained. *Id.*

21 Petitioner Jose Cortez-Trinidad voluntarily attended the September 23, 2025, ICE check-
22 in at the ICE ERO Richland office along with his brother. Collins Decl., Exh. D, I-213 at 2. At
23 the appointment, ICE advised Petitioner Jose Cortez-Trinidad that his brother was going to be
24 taken into ICE custody that day. *Id.* Petitioner Jose Cortez-Trinidad then *self-elected* to go into

1 ICE custody. *Id.* ICE additionally detained Petitioner Jose Cortez-Trinidad on the basis that he
 2 did not obtain written permission from DHS before changing his place of residence, as required
 3 under his OREC. *Id.* Benjamin Decl., ¶ 27; Collins Decl., Exh. B, OREC. ICE then transferred
 4 him to the Northwest ICE Processing Center, in Tacoma, Washington, where he remains
 5 detained. *Id.*

6 On November 10, 2025, Petitioners filed this habeas action. Petitioners each claim that
 7 his detention violates due processes because he complied with the conditions of his order of
 8 release, including attending all ICE check-ins, did not receive written notice detailing reasons
 9 for his detention, and ICE re-detained him without assessing whether he was a flight risk or a
 10 danger to the community, and without a decision before a neutral decision maker. Pet., ¶¶ 25,
 11 36, 58. As described below, Petitioners' detention is lawful.

12 III. LEGAL STANDARD

13 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
 14 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her
 15 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §
 16 2241(c)(3).

17 IV. ARGUMENT

18 A. Petitioners are lawfully detained

19 As applicants for admission, Petitioners are mandatorily detained pursuant to 8 U.S.C. §
 20 1225(b)(2). *See Matter of Q. Li*, 29 I&N Dec. at 69; *Matter of Yajure Hurado*, 29 I&N Dec. at
 21 220. Although DHS made an initial determination that Petitioners were appropriate for release
 22 on an OREC, DHS has the discretion to revoke such conditional parole. *See* 8 C.F.R.
 23 § 1236.1(c)(9). Petitioners' detention here under without a pre-detention hearing was thus
 24 lawful.

1 **B. Revocation of Petitioners' OREC comports with due process.**

2 Petitioner Jose Cortez Trinidad voluntarily chose to be re-detained by ICE. Collins
3 Decl., Exh. D, I-213 at 2. He cannot now complain to this Court that he was denied notice and
4 an opportunity to be heard. As such, Petitioner Jose Cortez Trinidad's claims for relief must be
5 denied.

6 That aside, Petitioners incorrectly argue that they were entitled to additional process
7 before they were taken back into ICE custody. As an initial matter, ICE has a legitimate, non-
8 punitive interest in Petitioners' detention. ICE made individual determinations in both cases to
9 revoke Petitioners' conditional parole based on violations of their conditions of release –
10 Petitioner Adolfo Cortez-Trinidad for his *eleven* failures to adhere to the ATD program, and
11 Petitioner Jose Cortez Trinidad for failing to obtain permission to change his residence.
12 Benjamin Decl., ¶¶ 20,27. When they were first placed on OREC, ICE notified both Petitioners
13 that their release was conditional, and any violation of the conditions would be grounds for
14 revocation. Collins Decl., Exhs. A, B, OREC. Petitioners both indicated that they understood
15 this. *See id.*

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

1 Furthermore, DHS is not restricted from rearresting noncitizens absent a change in
2 circumstance. The Board of Immigration Appeals (“BIA”) has recognize[d] counsel’s
3 argument” in this regard; but the BIA did not hold that such changed circumstances were a
4 requirement for rearrest. *In re Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981); *see also Saravia*
5 *v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) (“[T]he district court never held that
6 *Sugay* requires these hearings.”). Other courts have recognized that *Sugay*’s dicta is not
7 “binding on ICE.” *Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19
8 (S.D.N.Y. Dec. 27, 2018). Regardless, as discussed below, the OREC term violations were a
9 changed circumstance that led to Petitioners’ re-detention.

10 Federal Respondents acknowledge that district courts have recently decided that the
11 revocation of an OREC requires a pre-detention hearing to determine if that noncitizen is a
12 flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192,
13 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions
14 erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a
15 determination set forth in Section (c)(8) into the discretionary determination of revoking an
16 OSUP in Section (c)(9)). Both Sections provide that the decisions to release or revoke are
17 discretionary. But Section 1231(c)(8) includes language requiring the officer to decide that the
18 alien “would not pose a danger to property or persons, and that the alien is likely to appear for
19 any future proceeding.” In contrast, Section 1231(c)(9) does not require such a determination
20 and specifically provides that “release may be revoked at any time.” Moreover, the risk of
21 possible erroneous deprivation is low when a person does not comply with ATD requirements
22 after explicitly agreeing to do so as a condition of release. The same would be true for someone
23 who commits a crime after agreeing not to violate the law.

1 Petitioners' re-detention also comports with procedural due process. "Due process is
2 flexible and calls for such procedural protections as the particular situation demands." *Mathews*
3 *v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's
4 detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental
5 requirement of due process is the opportunity to be heard at a meaningful time and in a
6 meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of
7 (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous
8 deprivation of such interest through the procedures used, and probable value, if any, of
9 additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-
10 35.

11 Federal Respondents recognize the "weighty liberty interests implicated by the
12 Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
13 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
14 from immigration detention have a protected liberty interest in remaining out of custody, the
15 weight of that liberty must be considered in the broader picture of the immigration system,
16 which has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After
17 all, "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the
18 Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make
19 rules as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*,
20 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the
21 Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and
22 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."
23 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly
24 "recognized detention during deportation proceedings as a constitutionally valid aspect of the

1 deportation process.” *Demore*, 538 U.S. at 523. While Petitioners have some liberty interest in
2 their continued freedom from detention after being released from custody, that interest is
3 tempered by the relatively short period of time that they were released and the fact that they
4 have always been aware of and subject to conditions of his release. Furthermore, Petitioner Jose
5 Cortez Trinidad voluntarily chose to be detained and thus makes no showing that he had any
6 remaining liberty interest implicated in his re-detention.

7 Turning to the second *Mathews* factor, the risk of a constitutionally significant
8 deprivation of Petitioners’ liberty without a pre-deprivation hearing here is minimal. Petitioners
9 had notice that violations of the OREC’s terms could lead to their re-detention when they
10 agreed to the program. Petitioners’ re-detention is the product of such violations.

11 As for the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test
12 “must account for the heightened government interest in the immigration detention context.”
13 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the
14 Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
15 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez*
16 *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it
17 comes to determining whether removable aliens must be released on bond during the pendency
18 of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an
19 interest in enforcing compliance with its orders of release on recognizance and returning
20 individuals to custody who violate their terms.

21 In short, the three *Mathews* factors demonstrate that Petitioners’ detention comports with
22 procedural due process.

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition.

DATED this 20th day of November, 2025

Respectfully submitted,

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I certify that this memorandum contains 2,487 words, in compliance with Local Civil Rules.