District Judge Kymberly K. Evanson

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

P.T., Petitioner, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:25-cv-02249-KKE **FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM**

I. INTRODUCTION

This Court should deny Petitioner P.T.'s Petition for a Writ of Habeas Corpus. Dkt. 1. Petitioner asserts that the revocation of his conditional parole and his resultant immigration detention violate due process. But U.S. Immigration and Customs Enforcement ("ICE") lawfully revoked Petitioner's conditional parole after a senior official determined that he had not complied with the conditions of his release. Furthermore, as an applicant for admission, Petitioner is properly detained at the Northwest ICE Processing Center 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).

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

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Accordingly, Federal Respondents request that the Petition be denied. Federal Respondents are not seeking an evidentiary hearing.

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).

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

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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 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[2] 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

[2] 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).

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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).

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).

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B. Petitioner[3]

Petitioner is a native and citizen of India who illegally entered the United States without inspection or parole and was apprehended near the United States – Mexico border in January 2023. Pet., ¶ 8; Baez-Santiago Decl., ¶ 3. DHS issued Petitioner a notice to appear, placing him into removal proceedings, and then released him due to a lack of bedspace. Pet., ¶¶ 8, 9; Baez-Santiago Decl., ¶ 3. Petitioner was subsequently placed on an Order of Release on Recognizance ("OREC"). Lambert Decl., Ex. A, OREC. As a condition of his release, Petitioner was required to comply with the Alternatives to Detention ("ATD") program. *Id.*; Baez-Santiago Decl., ¶ 4.

However, Petitioner did not comply with six biometric check-ins required by ATD in 2023. Baez-Santiago Decl., ¶ 5. As a result, Assistant Field Office Director Baez-Santiago revoked Petitioner's OREC on November 8, 2025, and he was taken into ICE custody. *Id.*, ¶ 6; Lambert Decl., Ex. B, Form I-213;[4] Ex. C, OREC cancellation memo.

After his redetention, Petitioner's immigration case was transferred from the Portland Immigration Court to the Tacoma Immigration Court, where the proceedings are currently pending. Baez-Santiago Decl., ¶¶ 7-8. He is detained pursuant to 8 U.S.C. § 1225(b). *See Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025); *Matter of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025).

On November 11, 2025, Petitioner filed this habeas action. He claims that his detention violates due process because "he was released on his own recognizance, he is not a flight risk or a danger to the community, and Respondents have re-detained him without conducting a pre-deprivation hearing to determine if changed circumstances exist sufficient to find that Petitioner

[3] Due to the expedited briefing schedule, undersigned counsel has not yet received Petitioner's alien file.

[4] Undersigned counsel obtained this unsigned version of the Form I-213 from ICE's systems as the signed version will not be available until Petitioner's alien file is received.

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is now a flight risk or a danger to the community." Pet., ¶ 14. As described below, Petitioner's detention is lawful.

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).

Applicants for admission fall into one of two categories. Section 1225(b)(1) covers aliens 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).

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Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings,* 583 U.S. at 283.

Petitioner's detention is lawful pursuant to Section 1225(b). There is no dispute that Petitioner is an "applicant for admission" under Section 1225(a). That provision specifically provides that any "alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Because Petitioner entered the country without inspection, and was never "admitted," he thus unambiguously remains an "applicant for admission." *See* Pet., ¶ 4.

B. The revocation of Petitioner's OREC comports with due process.

Although DHS made an initial determination that Petitioner was appropriate for release on an OREC, DHS has the discretion to revoke such conditional parole. When a noncitizen is apprehended, a DHS officer makes an initial custody determination.[5] *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.

[5] Petitioner 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). Petitioner is an applicant for admission. 8 U.S.C. § 1225(a)(1).

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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 Petitioner was placed on an OREC.

On the other end, ICE has the 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).

Petitioner incorrectly argues that he is being detained "without a valid purpose" and also allege that this detention is unlawful because it was done "without a pre-detention procedure to determine flight risk or danger to the community." Dkt. No. 3, TRO Mot., at 4. First, ICE has a legitimate, non-punitive interest in his detention. Assistant Field Officer Director Baez-Santiago made an individual determination to revoke Petitioner's conditional parole based on the ATD violations. Baez-Santiago Decl., ¶ 6. And as Petitioner was notified when he agreed to his conditional parole, his ATD violations are a basis of such revocation.

Second, a pre-deprivation hearing to determine whether Petitioner is a flight risk or danger to the community is not required. There is no statutory or regulatory requirement for a hearing before an individual in removal proceedings is redetained, and the Supreme Court has

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warned courts against reading additional procedural requirements into the Immigration and Nationality Act. *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)).

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

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

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contrast, Section 1231(c)(9) does not require such a determination and specifically provides that "release may be revoked at any time." Moreover, the risk of possible erroneous deprivation is low when a person does not comply with ATD requirements after explicitly agreeing to do so as a condition of release. The same would be true for someone who commits a crime after agreeing not to violate the law.

Petitioner's redetention also comports with procedural due process. "Due 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 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.

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). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that a noncitizen 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

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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 Petitioner 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 and the fact that he has always been aware of and subject to conditions of his release.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's liberty without a predeprivation hearing here is minimal. Petitioner had notice that ATD violations could lead to his redetention when he agreed to the program. His redetention is the product of ATD violations.

As for 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. The government likewise has an interest in enforcing compliance with its orders of release on recognizance and returning individuals to custody who violate their terms.

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

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CONCLUSION

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

DATED this 19th day of November, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,362 words, in compliance with the Local Civil Rules.