

District Judge Tiffany M. Cartwright

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

JEFFERSON ENRIQUE BELLO CHACON,

Petitioner,

v.

LAURA HERMOSILLO,¹ *et al.*,

Respondents.

Case No. 2:25-cv-02299-TMC

FEDERAL RESPONDENTS'² RETURN

Noted for Consideration:
November 26, 2025

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) detains Petitioner Jefferson Enrique Bello Chacon for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b). The plain language of the Immigration and Nationality Act (“INA”) mandates that Petitioner – who is present in the United States without having been admitted – is correctly considered as an “applicant for admission” and therefore subject to detention under 8 U.S.C. § 1225(b). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.”). The best reading of the

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

² Respondent Bruce Scott is not a federal employee and not represented by undersigned counsel.

1 statute is that Congress insured that all noncitizens would be inspected by immigration authorities
2 by treating noncitizens who are present in the United States without having been inspected and
3 admitted as applicants for admission.

4 This Court has found that mandatory detention under Section 1225(b) is unlawful for
5 certain noncitizens (the “Bond Denial Class”). *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-
6 TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). The Government has appealed this
7 decision. *See* Case No. 3:25-cv-05240-TMC, Dkt. No. 71, Notice of Appeal. Petitioner is not part
8 of the Bond Denial Class because he was apprehended upon arrival when he entered the United
9 States.

10 Accordingly, Federal Respondents respectfully request that the Court deny the habeas
11 petition.

12 II. BACKGROUND

13 A. Legal Background

14 1. Applicants for Admission

15 “The phrase ‘applicant for admission’ is a term of art denoting a particular legal status.”
16 *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

17 (1) Aliens treated as applicants for admission. – An alien present in the United
18 States who has not been admitted or who arrives in the United States (whether
19 or not at a designated port of arrival ...) shall be deemed for the purposes of
20 this Act an applicant for admission.

21 8 U.S.C. § 1225(a)(1).³ Section 1225(a)(1) was added to the INA as part of the Illegal Immigration
22 Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No. 104-208, § 302, 110
23 Stat. 3009-546. “The distinction between an alien who has effected an entry into the United States

24 ³ Admission is the “lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13).

1 and one who has never entered runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S.
2 678, 693 (2001).

3 Before IIRIRA, “immigration law provided for two types of removal proceedings:
4 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)
5 (en banc). A deportation hearing was a proceeding against a noncitizen already physically present
6 in the United States, whereas an exclusion hearing was against a noncitizen outside of the United
7 States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an
8 applicant was eligible for “admission” was determined only in exclusion proceedings, and
9 exclusion proceedings were limited to “entering” noncitizens – those noncitizens “coming ... into
10 the United States, from a foreign port or place or from an outlying possession.” *Plasencia*, 459
11 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-citizens who had entered without
12 inspection could take advantage of greater procedural and substantive rights afforded in
13 deportation proceedings, while noncitizens who presented themselves at a port of entry for
14 inspection were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602
15 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA,
16 noncitizens who attempted to lawfully enter the United States were in a worse position than
17 noncitizens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R.
18 Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA “replaced deportation and exclusion
19 proceedings with a general removal proceeding.” *Hing Sum*, 602 F.3d at 1100.

20 IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
21 lawfully admitted, regardless of their physical presence in the country, are placed on equal footing
22 in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt.
23 1, at 225 (explaining that Section 1225(a)(1) replaced “certain aspects of the current ‘entry
24 doctrine,’” under which noncitizens who entered the United States without inspection gained

1 equities and privileges in immigration proceedings unavailable to aliens who presented themselves
2 for inspection at a port of entry). The provision “places some physically-but not-lawfully present
3 noncitizens into a fictive legal status for purposes of removal proceedings.” *Torres*, 976 F.3d at
4 928.

5 **2. Detention Under 8 U.S.C. § 1225(b)**

6 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
7 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
8 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
9 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
10 and expeditiously removing the aliens making such claims from the country.”). Section 1225
11 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
12 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
13 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
14 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
15 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287.

16 Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially
17 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.”
18 *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(2) is “broader” and “serves as a catchall
19 provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by
20 § 1225(b)(1).” *Id.* Under Section 1225(b)(2), a noncitizen “who is an applicant for admission” is
21 subject to mandatory detention pending full removal proceedings “if the examining immigration
22 officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to
23 be admitted.” 8 U.S.C. § 1225(b)(2)(A). While Section 1225 does not provide for noncitizens to
24 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).

3. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under Section 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.⁴ By regulation, immigration officers can release a noncitizen if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

B. **Petitioner Jefferson Enrique Bello Chacon⁵**

Castillo is a native and citizen of Venezuela who entered the United States without inspection through the Mexico – United States border on or about September 16, 2023. Soraghan Decl., ¶ 3; Lambert Decl., Ex. A, I-213 (dated Sept. 17, 2023); Ex. B, Warrant for Arrest. DHS issued a notice to appear charging him as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Soraghan Decl., ¶ 4; Lambert Decl., Ex. C, Notice to Appear. Petitioner was released on his own recognizance and placed on an Order of Release on Recognizance (“OREC”) due to a lack of bed space. Soraghan Decl., ¶ 5; Lambert Decl., Ex. D, Notice of Custody Determination; Ex. E,

⁴ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

⁵ Due to the expedited briefing schedule, this Office has not yet received Petitioner’s certified A-File from U.S. Citizenship and Immigration Services. These facts are based on records provided by ICE.

1 OREC. Petitioner filed an asylum application with the immigration court in July 2024. Soraghan
2 Decl., ¶ 14.

3 Petitioner was enrolled in the Alternatives to Detention Program (“ATD”) in March 2024.
4 Soraghan Decl., ¶ 13. He has had multiple non-compliance violations. *See id.*, ¶¶ 15-18.

5 On November 8, 2025, ICE took Petitioner into custody in Portland, Oregon. *Id.*, ¶ 19;
6 Lambert Decl., Ex. F, Form I-213 (dated Nov. 8, 2025); Ex. G, Warrant for Arrest; Ex. H, Warrant
7 for Arrest. Acting Field Officer Director Baez-Santiago cancelled his OREC that same day.
8 Soraghan Decl., ¶ 19; Lambert Decl., Ex. I, Cancellation of Form I-220A. Petitioner was
9 transferred to, and is currently detained at, the Northwest ICE Processing Facility. Soraghan Decl.,
10 ¶¶ 19, 22.

11 On November 10, 2025, DHS filed a motion to sever Petitioner’s immigration proceedings
12 from his family members’ immigration cases and to change venue from the Portland Immigration
13 Court to the Tacoma Immigration Court. Soraghan Decl., ¶ 20. An immigration judge granted
14 these motions and Petitioner’s case is now docketed in Tacoma. *Id.*, ¶ 21.

15 III. ARGUMENT

16 Petitioner is an applicant for admission subject to mandatory detention. The INA, 8 U.S.C.
17 § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible and deportable noncitizens
18 and to ensure that noncitizens who are removable are in fact removed from the United States.
19 “[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior
20 to or during their removal proceedings, thus increasing the chance that if ordered removed, the
21 aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme
22 Court has long held that deportation proceedings “would be in vain if those accused could not be
23 held in custody pending the inquiry” of their immigration status. *Wong Wing v. United States*, 163
24 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be detained during the

1 course of their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the “plain
2 meaning” of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily
3 detained for the duration of their immigration proceedings).

4 The plain language of the statute is clear: Petitioner is subject to detention under Section
5 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216,
6 220 (BIA 2025). Section 1225(b)(1) indisputably requires the mandatory detention of arriving
7 aliens for the duration of their credible fear determination and removal proceedings,
8 even if they are subsequently paroled. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); 8 C.F.R. § 1001.1(q).
9 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for
10 admission, if the examining immigration officer determines that an alien seeking admission is not
11 clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C. § 1225(b)(2)(A). The INA
12 specifies that “[a]n alien present in the United States who has not been admitted . . . shall be deemed
13 for purposes of this Act an applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner does not
14 dispute that he is a noncitizen who is present in the United States without having been admitted.
15 Thus, Petitioner is an “applicant for admission” and subject to mandatory detention under Section
16 1225(b).

17 Furthermore, ICE lawfully revoked Petitioner’s conditional parole after a senior official
18 determined that he had not complied with the conditions of his release. Although DHS made an
19 initial determination that Petitioner was appropriate for release on an OREC, DHS has the
20 discretion to revoke such conditional parole. When a noncitizen is apprehended, a DHS officer
21 makes an initial custody determination.⁶ *See* 8 C.F.R. § 1236.1(c)(8).

22
23 ⁶ Petitioner may incorrectly argue that DHS’s initial release and his placement on an OREC in 2023 shows that his
24 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).

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.

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).

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

1 specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts . . . are
2 generally not free to impose [additional procedural rights] if the agencies have not chosen to grant
3 them”) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,*
4 *Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

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

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

1 does not comply with ATD requirements after explicitly agreeing to do so as a condition of release.

2 The same would be true for someone who commits a crime after agreeing not to violate the law.

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

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

1 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
 2 538 U.S. at 523. While Petitioner has some liberty interest in his continued freedom from detention
 3 after being released from custody, that interest is tempered by the relatively short period of time
 4 that he was released and the fact that he has always been aware of and subject to conditions of his
 5 release.

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

10 As for the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test
 11 “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 interest in
 18 enforcing compliance with its orders of release on recognizance and returning individuals to
 19 custody who violate their terms.

20 In short, the three *Mathews* factors demonstrate that Petitioner’s detention comports with
 21 procedural due process. Accordingly, his mandatory detention pursuant to Section 1225(b) is
 22 lawful.

23 //

24 //

1 **CONCLUSION**

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

4 DATED this 25th day of November, 2025.

5 Respectfully submitted,

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19 *I certify that this memorandum contains 3,438*
20 *words, in compliance with the Local Civil Rules*