

District Judge James L. Robert

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

MUSSIE TEWELDEMEDHIN,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:25-cv-02363-JLR

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
December 12, 2025

I. INTRODCUTION

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner Mussie Teweldemedhin pursuant to 8 U.S.C. § 1225(b). ICE redetained Petitioner after revoking his previously issued Order of Supervision, in accordance with the Immigration and Nationality Act ("INA") and its controlling regulations because ICE had obtained a travel document to execute his removal order. In doing so, ICE gave Petitioner notice and an opportunity to be heard, consistent with due process. After his redetention, Petitioner sought to have his removal proceedings reopened. Thus, while he was subject to Section 1231(a) when he had a final order of removal,

¹ Respondent Bruce Scott is not a Federal Respondent.
FEDERAL RESPONDENTS' RETURN MEMORANDUM
[Case No. 2:25-cv-02363-JLR] - 1

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

1 the detention authority for Petitioner's detention later shifted to Section 1225(b) when his motion
2 to reopen his proceedings was granted.

3 Accordingly, Petitioner's redetention is lawful and this Court should deny the Petition.

4 IL BACKGROUND

5 A. Detention Under 8 U.S.C. § 1225

6 The INA governs the detention and release of noncitizens during and following their
7 removal proceedings. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
8 detention periods are generally referred to as "pre-order" (meaning before the entry of a final order
9 of removal) and, "post-order" (meaning after the entry of a final order of removal). Compare 8
10 U.S.C. § 1225 with § 1231(a) (authorizing post-order detention).

11 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
12 Executive could "expedite removal of aliens lacking a legal basis to remain in the United States."
13 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); see also *Dep't of Homeland Sec. v. Thuraissigiam*,
14 591 U.S. 103, 106 (2020) ("[Congress] crafted a system for weeding out patently meritless claims
15 and expeditiously removing the aliens making such claims from the country."). Section 1225
16 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in
17 the United States who [have] not been admitted" or noncitizens "who arrive[] in the United
18 States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
19 admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by
20 § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S.
21 281, 287 (2018).

22 Relevant here, Section 1225(b)(1) applies to "arriving aliens" and "certain other"
23 noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of
24 valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings

1 under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to
 2 apply for asylum² or expresses a fear of persecution, torture, or return to the noncitizen's country.
 3 See 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration
 4 judge does not find a credible fear, the noncitizen is "removed from the United States without
 5 further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2);
 6 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a
 7 credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. §
 8 1229a, but remains subject to mandatory detention. See 8 C.F.R. § 208.30(f); 8 U.S.C. §
 9 1225(b)(1)(B)(iii)(IV).

10 B. Post-order Detention and Release.

11 After a person is ordered removed, ICE is charged with executing removal of the noncitizen
 12 from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on
 13 detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be
 14 detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from
 15 the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court further
 16 specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is
 17 no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.*, at
 18 699.

19 Once it is determined that there is no significant likelihood of removal in the reasonably
 20 foreseeable future, DHS may release noncitizens on an Order of Supervision ("OSUP"). 8 C.F.R.
 21 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
 22

23 ² Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except
 24 if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.*
 § 1558(a)(2)(D).

1 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates
 2 any of the conditions of release,” *Id.*, §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that
 3 there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.”
 4 *Id.*, § 241.13(i)(2).

5 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the reasons
 6 for revocation of his or her release” and will receive an “initial informal interview promptly” after
 7 being detained, to “afford the alien an opportunity to respond to the reasons for revocation stated
 8 in the notification.” *Id.*, § 241.13(i)(3). “The revocation custody review will include an evaluation
 9 of any contested facts relevant to the revocation and a determination whether the facts as
 10 determined warrant revocation and further denial of release.” *Id.* Then, if the alien’s request for
 11 release is denied, he or she “may submit a request for review of his or her detention . . . six months
 12 after [DHS’s] last denial of release[.]” *Id.*, § 241.13(j).

13 **C. Petitioner Musale Teweldemedhin**

14 Petitioner is a citizen of Eritrea. Arambula Decl., ¶ 3. He applied for admission to the
 15 United States from Mexico at the San Ysidro Port of Entry on January 24, 2019. *Id.* He lacked
 16 any valid documents that would allow him to be admitted to the United States. *Id.* U.S. Customs
 17 and Border Patrol (“CBP”) deemed him to be inadmissible pursuant to 8 U.S.C.
 18 § 1182(a)(7)(A)(i)(I). *Id.*, ¶ 4. He was detained and transferred to ICE custody. *Id.* Although
 19 Petitioner was initially processed as an expedited removal, DHS subsequently issued him a notice
 20 to appear and placed him into removal proceedings. Lambert Decl., Ex. A, Notice of Expedited
 21 Removal; Ex. B, Notice to Appear. On August 7, 2019, an immigration judge ordered Petitioner
 22 removed to Eritrea.³ Lambert Decl., Ex. C, Order of the Immigration Judge.

23
 24 ³ On August 12, 2025, an immigration judge issued an amended removal order at DHS’s request to reflect Eritrea as
 the country of removal. Lambert Decl., Ex. D, Amended Order of the Immigration Judge.

1 In May 2020, ICE released Petitioner on an OSUP because the agency was unable to obtain
2 a travel document to execute his removal to Eritrea. Arambula Decl., ¶ 6; Lambert Decl., Ex. E,
3 OSUP. On July 14, 2025, ICE revoked Petitioner's OSUP because it had obtained a travel
4 document to remove Petitioner to Eritrea. Arambula Decl., ¶ 8; Lambert Decl., Ex. F, Form I-213.
5 ICE redetained him and served him with notice of the OSUP revocation. Lambert Decl., Ex. G,
6 Notice of Revocation of Release; Ex. H, Notice of Custody Determination; Ex. I, Warrant of
7 Removal; Ex. J, Warrant for Arrest.

8 On September 23, 2025, the Executive Office of Immigration Review granted Petitioner's
9 motion to reopen his removal proceedings. Arambula Decl., ¶¶ 9, 10. Because his removal
10 proceedings are now reopened, Petitioner is no longer subject to a final order of removal and is
11 mandatorily detained pursuant to Section 1225(b).

12 III. LEGAL STANDARD

13 "The district courts of the United States ... are courts of limited jurisdiction. They possess
14 only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopah Servs.,*
15 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been
16 tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland*
17 *Sec. v. Thuraistiglam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district
18 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
19 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
20 or treaties of the United States. See 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
21 969 n.16 (9th Cir. 2004).

22 IV. ARGUMENT

23 Petitioner challenges his detention based on allegations that his OSUP was revoked in
24 violation of the Due Process Clause of the Fifth Amendment. Pet., ¶¶ 50-57. However,

1 Petitioner's OSUP revocation substantially complied with the relevant regulations and comports
2 with due process.

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

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). However, Petitioner's interest in his liberty generally does not
14 mean that he possesses a separate or heightened liberty interest in the continuation of his
15 conditional release on OSUP once ICE is able to execute an outstanding order of removal.⁴ The
16 recognized liberty interests of U.S. citizens and aliens who have been ordered removed are not
17 coextensive: the Supreme Court has "firmly and repeatedly endorsed the proposition that Congress
18 may make rules as to aliens that would be unacceptable if applied to citizens." *Rodriguez Diaz v.*
19 *Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).
20 As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and
21 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."
22 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

23
24 ⁴ Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

1 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
2 of Petitioner's liberty here was minimal when he was redetained because ICE had obtained a travel
3 document to execute his removal order. The travel document demonstrates that ICE made an
4 individualized determination concerning Petitioner's likelihood of removal based on changed
5 circumstances. Specifically, ICE was able to remove Petitioner to Eritrea. 8 C.F.R. § 241.13(i)(2).

6 As outlined above, DHS established a clear statutory framework in 8 C.F.R. § 241.13(i)
7 that sets forth the requirements and process for affecting an OSUP revocation. When ICE
8 determines that there is a "significant likelihood" an alien can be removed from the United States
9 within the "reasonably foreseeable future," ICE is clearly permitted to revoke the OSUP and take
10 the alien into custody. Nothing else is required for revocation under these circumstances. *Id.*, §
11 241.13(i)(1) and (2); see also *Nizar Esmail v. Noem, et al.*, 2025 WL 3030590, at *2 (C.D. Cal.
12 Sept. 12, 2025).

13 Due process does not require a pre-deprivation hearing prior to the revocation of an OSUP.
14 Pet. ¶ 3 (asserting that DHS was required to provide Petitioner with a pre-detention hearing "where
15 DHS was required to justify the bases for re-detention or explain why Petitioner is a flight risk or
16 a danger to the community."). At the time of his redetention, Petitioner was subject to a final order
17 of removal. ICE had a valid travel document to execute that removal order. Based on those facts,
18 any protected liberty interest that Petitioner may have had in remaining in the community on
19 supervision is addressed by 8 C.F.R. § 241.13. See *Ahmad v. Whitaker*, No. 18-cv-287-JLR-BAT,
20 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018), report and recommendation adopted, 2019
21 WL 95571 (W.D. Wash. Jan. 3, 2019) (discussing requirements of Section 241.13 and stating that
22 "[t]he regulations do not require notice").

23 //

24 //

1 To support his assertion that a pre-detention hearing is required for OSUP revocation,
2 Petitioner relies on cases involving noncitizens who were redetained while their removal
3 proceedings were still pending. Pet., ¶ 6, 43-47. But these cases are not comparable. An OSUP
4 is issued when a person with a removal order cannot be removed in the reasonably foreseeable
5 future. In contrast, a noncitizen may be released on an order of release on recognizance while
6 removal proceedings are still pending when ICE determines that the noncitizen is not a danger or
7 a risk of flight. See 8 C.F.R. § 1236.1(c)(8). Thus, some district courts have found that redetaining
8 a person released during pending removal proceedings without first reconsidering dangerousness
9 and risk of flight “poses a significant risk of an erroneous deprivation of Petitioner’s liberty interest
10 in continued release.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025).
11 But those factors are not relevant here when Petitioner’s OSUP revocation was based on the
12 likelihood of his removal.

13 The OSUP regulation requires a cause for redetention, “namely a change in circumstances
14 such that there is a significant likelihood that the noncitizen will be removed in the reasonably
15 foreseeable future.” *Id.* (citing 8 C.F.R. § 241.13(i)(2)). The facts here clearly demonstrate such
16 a change in circumstances. While ICE had been unable to obtain a travel document to conduct
17 Petitioner’s removal to Eritrea before he was released on OSUP, ICE obtained a travel document
18 prior to his redetention. Lambert Decl., Ex. F. Section 241.13(i)(3) further outlines the OSUP
19 revocation procedures and provides that “upon revocation,” i.e., not before revocation, “the alien
20 will be notified of the reasons for the revocation” and to conduct an “initial interview promptly
21 after his or return to Service custody to afford the alien an opportunity to respond to the reasons
22 for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). Furthermore, Petitioner received
23 written notification that his release was being revoked because “ICE has received your travel
24

1 document from the Government of Eritrea and you are being returned to ICE custody to effect
2 your removal from the United States.” Lambert Decl., Ex. G.

3 Federal Respondents acknowledge that the regulations require an informal interview after
4 a revocation of release. 8 C.F.R. § 241.13(i)(3). However, Petitioner cannot demonstrate that the
5 facts here support an actionable injury even if an informal interview was not conducted given that
6 ICE had obtained a travel document for his removal prior to his redetention. The informal
7 interview is required so a noncitizen may present information showing that there is no significant
8 likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(3). As Eritrea
9 had issued the travel document prior to Petitioner’s redetention, it is unclear how Petitioner could
10 provide any such information. “Thus, there is no apparent reason that ICE’s failure to provide an
11 informal interview should result in [Petitioner’s] release.” *Ahmad*, 2018 WL 6928540, at *5.

12 Here, ICE properly took custody of Petitioner because a travel document had been
13 obtained, and Petitioner could be removed. Lambert Decl., Ex. G. Upon revocation, ICE provided
14 Petitioner with written notice of the reason for its determination. *Id.* Since that time, he has
15 reopened his removal proceedings and is before the immigration court. Arambula Decl., ¶ 9-11.
16 Accordingly, Petitioner’s redetention and current mandatory detention align with the principles of
17 due process.

18 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
19 test “must account for the heightened government interest in the immigration detention context.”
20 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
21 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
22 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
23 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). Although Petitioner’s removal proceedings
24 have been reopened, at the time of his redetention, ICE had a travel document and could execute

1 his removal to Eritrea. There can be no doubt that this satisfied the changed circumstances in the
2 ability to remove Petitioner at that time. As a result, the Government's interest to execute the
3 outstanding removal order by redetaining Petitioner was significant. With his removal proceedings
4 reopened, Petitioner is now subject to mandatory detention under Section 1225(b).

5 In sum, the three *Mathews* factors demonstrate that Petitioner's detention comports with
6 procedural due process and that ICE substantially adhered to its own regulations in revoking
7 Petitioner's OSUP.

8 V. CONCLUSION

9 For the foregoing reasons, Petitioner has not satisfied his burden of establishing entitlement
10 to relief and the petition should be denied.

11 DATED this 8th day of December, 2025.

12 Respectfully submitted,

13 CHARLES NEIL FLOYD
14 United States Attorney

15 */s/ Michelle R. Lambert*

16 MICHELLE R. LAMBERT, NYS #4666657
17 Assistant United States Attorney
18 United States Attorney's Office
19 Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

20 *Attorneys for Federal Respondents*

21 *I certify that this memorandum contains 2,771*
22 *words, in compliance with the Local Civil Rules.*