The Honorable Grady J. Leupold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANCIS TSYAMBA and LUIS ENRIQUE ARREOLA SERENO, Petitioners, v. LAURA HERMOSILLO, Seattle Acting Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); BRUCE SCOTT,[1] Warden, Northwest ICE Processing Center; KRISTI NOEM, Secretary, United States Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General, Respondents.	Case No. 2:25-cv-02623-GJL FEDERAL RESPONDENTS' RETURN

I. INTRODUCTION

Noncitizens apprehended at the border and placed in removal proceedings under 8 U.S.C. § 1225(b)(1) "shall be detained" for the duration of those proceedings. Despite this command, U.S. Immigration and Customs Enforcement (ICE) exercised its discretion to grant Petitioners parole

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

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into the United States during their removal proceedings. They are lawfully detained while their asylum claims are pending. Petitioners' habeas petition should be denied. Congress has mandated detention under 8 U.S.C. § 1225(b) and denied notice for parole revocation, expressly foreclosing Petitioners' claim that they are entitled to a hearing where the government must prove that they are a flight risk or a danger before their parole is revoked.[2]

II. BACKGROUND

A. 8 U.S.C. § 1225(b)

Petitioners are applicants for admission who are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *See Matter of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025). 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).

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.

B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A)

While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory detention, they may be subject to parole by the Attorney General or the Department of Homeland

[2] The Federal Respondents acknowledge that courts in this judicial district have held otherwise. Dkt. 1, pg. 1-2 (citing cases). The Federal Respondents respectfully disagree with these holdings.

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Security (DHS), and that is not an issue that the Immigration Judge has authority to consider. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a) (2025) (designating who may exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney General may grant aliens detained under Section 235(b)(1) temporary parole into the United States "for urgent humanitarian reasons or significant public benefit" (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)). This discretionary parole is statutorily required to be "temporary parole" under 8 U.S.C. § 1182(d)(5)(A), and the statute does not grant the Attorney General or DHS the discretion to grant indefinite parole to those subject to mandatory detention.

C. Petitioner Francis Tsyamba

Petitioner is a native and citizen of Kenya. *See* Declaration of Deportation Officer Robert Andron (Andron Decl.) at ⁋ 3. On or about April 24, 2024, Petitioner arrived in the United States at the Boston Logan Airport and did not then possess a valid travel or entry document. *Id.* at ⁋ 4. On the same day, Petitioner was processed for Expedited Removal and then he subsequently claimed fear of return to Kenya. *Id.* at ⁋ 5. As a result, U.S. Customs and Border Protection referred Petitioner to U.S. Citizenship and Immigration Services (CIS) for a credible fear interview. *Id.*

On May 14, 2024, CIS made a positive credible fear determination. *Id.* at ⁋ 6. On May 24, 2024, CIS issued Petitioner a Notice to Appear, charging him as removable under INA § 212(a)(7)(A)(i)(I). *Id.* at ⁋ 7. On the same day, Petitioner was released by immigration officials on parole with directions to keep his address up to date and report to the local ICE office when required. *Id.* at ⁋ 8.

On July 8, 2024, at an ERO check-in, Petitioner was enrolled in Alternatives to Detention ("ATD") for reporting and monitoring during removal proceedings while Petitioner remained on the non-detain immigration docket. *Id.* at ⁋ 9. On July 11, 2025, Petitioner reported for a check-in and was subsequently taken into custody without incident. *Id.* at ⁋ 10.

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On July 18, 2025, Petitioner appeared for his initial master calendar hearing with counsel. *Id.* at ¶ 11. Petitioner contested removability and the immigration judge reset his case to July 31, 2025, for parties to discuss. *Id.* On July 31, 2025, Petitioner appeared for his reset master calendar hearing with counsel. *Id.* at ¶ 12. Petitioner continued to contest removability and requested a continuance to file relevant evidence. *Id.* The immigration judge reset the case to August 6, 2025. *Id.*

On August 6, 2025, Petitioner appeared for his reset master calendar hearing with counsel. *Id.* at ¶ 13. Petitioner filed evidence demonstrating removability. *Id.* The immigration judge proceeded to set the individual merits hearing on the application of relief Petitioner had also filed. *Id.* On September 9, 2025, Petitioner appeared for his individual merits hearing with counsel. *Id.* at ¶ 14. The immigration judge took testimony and indicated they would issue a written decision at a later date. *Id.*

On September 11, 2025, the immigration judge issued a decision granting Petitioner's application for relief. *Id.* at ¶ 15. On September 17, 2025, DHS filed a notice of appeal to the Board of Immigration Appeals (BIA). *Id.* at ¶ 16. The appeal remains pending before the BIA. *Id.*

On October 22, 2025, Petitioner appeared for a bond hearing with counsel, which was scheduled pursuant to his request filed with the immigration court. *Id.* at ¶ 17. The immigration judge found no jurisdiction to grant bond given Petitioner was an arriving alien and mandatorily detained as an asylum seeker who passed his credible fear interview pursuant to *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). *Id.*

Petitioner remains detained under INA § 235(b). *Id.* at ¶ 18.

D. Petitioner Luis Enrique Arreola

Petitioner is a native and citizen of Mexico. See Declaration of Deportation Officer Paul Correa (Correa Decl.) at ¶ 3. On October 1, 2023, Petitioner arrived in the United States at the Port

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of Entry in San Ysidro, California, and did not then possess a valid travel or entry document. *Id.* at ¶ 4. On the same day, U.S. Customs and Border Protection (CBP) issued Petitioner a Notice to Appear, charging him as removable under INA § 212(a)(7)(A)(i)(I) and scheduling him for a hearing with the Seattle immigration Court. *Id.* at ¶ 5.

On or about October 6, 2023, Petitioner was released by immigration officials on parole with directions to keep his address up to date and report to the local ICE office when required. *Id.* at ¶ 6. On November 16, 2023, at an ERO check-in, Petitioner was enrolled in Alternatives to Detention (ATD) for reporting and monitoring during removal proceedings while Petitioner remained on the non-detain immigration docket. *Id.* at ¶ 7.

From October 3, 2024, to October 30, 2025, Petitioner missed seven biometric check-ins, failed a home visit, and had location services disabled in violation of his ATD requirements. *Id.* at ¶ 8.

On September 23, 2024, Petitioner filed an application for relief with the immigration court. *Id.* at ¶ 9. On November 13, 2025, Petitioner was encountered by ICE officers at a traffic stop. *Id.* at ¶ 10. Petitioner had been previously identified and been recorded as having ATD violations. *Id.* A warrant was approved prior to the traffic stop and Petitioner was subsequently taken into custody. *Id.* On the same, ERO issued a memorandum notifying Petitioner of the termination of his release based on lack of lawful immigration status and his history of ATD violations. *Id.* at ¶ 11.

On December 15, 2025, Petitioner appeared for his initial master calendar hearing with counsel. *Id.* at ¶ 12. The immigration judge granted Petitioner's request for a continuance to retain counsel. *Id.* The case was reset to January 12, 2026. *Id.*

Petitioner remains detained under INA § 235(b) as arriving alien. *Id.* at ¶ 13.

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III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts the authority to grant habeas relief "within their respective jurisdictions."

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. ICE lawfully detained Petitioners 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

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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*, 583 U.S. at 287.

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.

Petitioners' detention under Section 1225(b) without a pre-detention hearing was lawful. The fact that Petitioners had initially been released by ICE on conditional parole does not change this fact. There is no statutory or regulatory requirement that a noncitizen be provided with a pre-detention hearing before re-detention. ICE's authority to re-arrest is not limited to circumstances where a material change in circumstances has occurred. The facts here are simple: Petitioners were subject to mandatory detention, Petitioners were granted discretionary parole, ICE exercised its discretionary authority to revoke their parole, and they were re-detained.

Further, several provisions at 8 U.S.C. § 1252 preclude review. First, 8 U.S.C. § 1252(g) bars review of Petitioners' claims because they arise from the government's decision to commence removal proceedings. Second, 8 U.S.C. § 1252(b)(9) bars the Court from hearing Petitioners' claims because their claims challenge the decision and action to detain them, which arises from the government's decision to commence removal proceedings, thus an "action taken . . . to remove

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an alien from the United States." Third and lastly, 8 U.S.C. § 1252(e)(3) applies and limits "[j]udicial review of determinations under Section 1225(b) of this title and its implementation." The plain language of the statute precludes judicial review for aliens determined to be detained pursuant to Section 1225(b)(2) and applies to a "determination under section 1225(b)" and to its implementation.

B. Petitioners' detention comports with due process.

Petitioners' detention does not violate their substantive and procedural due process rights. Petitioners inaccurately argue that the standard for parole under 8 C.F.R. § 212.5(b) is that they are a flight risk or danger to the community. Instead, the default for mandatory detainees is no release. However, the Attorney General may provide parole only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit." 8 C.F.R. § 212.5(b).

1. Substantive Due Process

ICE has a legitimate interest in Petitioners' detention. For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235

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(1896)).

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.

Petitioners' detention here under Section 1225(b) without a pre-detention hearing was lawful. The fact that ICE made an initial determination that Petitioners could be released on parole does not prevent ICE from later revoking that parole, especially where they violated the conditions of their parole. ICE has the clear discretionary authority to revoke conditional parole. 8 C.F.R. § 236.1(c)(9). ICE made an individual discretionary determination to revoke Petitioners' parole. Thus, ICE had a legitimate, non-punitive interest in their detention.

2. 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 Petitioners' detention is consistent with their 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.

a. Liberty Interest.

The 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). However, Petitioners' interest in their liberty *generally* does not

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mean that they possess a separate or heightened liberty interest in the continuation of their conditional release. Moreover, Petitioners do not have a liberty interest in participating in parole.

"The 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*, 53 F.4th at 1206 (quoting *Demore*, 538 U.S. at 522). As the Supreme 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.

Petitioners' release was always subject to conditions of release, and they knew that they could be re-detained, especially if they violated the conditions of parole. Accordingly, Petitioners cannot claim that the government promised them ongoing freedom.

b. The existing procedures are constitutionally sufficient.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioners' liberty here is minimal. First, noncitizens have no right to a hearing before an immigration judge under Section 1225(b). Likewise, there is no requirement for such a hearing before re-detention after revocation of release. The Supreme Court has warned courts against reading additional procedural requirements into the INA. *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)).

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c. The Government has a strong interest in returning noncitizens to custody who violate conditions of release.

Turning to 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 Petitioners' detention comports with procedural due process.

CONCLUSION

Accordingly, Petitioners' habeas petition should be denied and dismissed without an evidentiary hearing.

DATED this 2nd day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 3,070 words, in compliance with the Local Civil Rules.

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