Chief Judge David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C.W.M., Petitioner, 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. 3:25-cv-02688-DGE 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.

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

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Immigration and Customs Enforcement (ICE) exercised its discretion to grant Petitioner parole into the United States during her removal proceedings. She is lawfully detained during the expedited removal process and while her asylum claim is pending. Petitioner's habeas petition should be denied. Congress has mandated detention under 8 U.S.C. § 1225(b) and denied notice for parole revocation, expressly foreclosing Petitioner's claim that she is entitled to a hearing where the government must prove that she is a flight risk or a danger before her parole is revoked. *See Zapata v. Chestnut*, 2025 WL 3687643, at *3-4 (E.D. Cal. Dec. 19, 2025).[2]

II. BACKGROUND

A. 8 U.S.C. § 1225(b)

Petitioner is an applicant for admission who is 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.

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

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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 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 C.W.M.

Petitioner is a native and citizen of Kenya. *See* Declaration of Deportation Officer Javier Delgado at ¶ 4. Petitioner last applied for admission to the United States on or about November 15, 2023, at Miami, Florida. *Id.* Petitioner lacked proper documentation to enter the United States and was paroled for sixty days for deferred inspection at Seattle, Washington. *Id.*

On January 15, 2024, Petitioner presented herself for deferred inspection at Seattle, Washington. *Id.* at ¶ 5. It was then determined that Petitioner was inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), as she lacked documents necessary for entry to the United States. *Id.* Petitioner was therefore denied entry pursuant to INA § 235. *Id.* Petitioner was port paroled for a period of one year. *Id.* at ¶ 6.

Petitioner checked in with ERO on December 18, 2025. *Id.* at ¶ 7; *see also* Declaration of Kristin B. Johnson, Ex. A. At the check-in, it was discovered that Petitioner's expedited removal

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interview had never occurred. *Id.* Petitioner was taken into custody in order to proceed with the expedited removal process initiated in January 2024. *Id.*

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 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 or her 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

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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*, 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.

Petitioner's detention under Section 1225(b) without a pre-detention hearing was lawful. *Zapata*, 2025 WL 3687643, at *3-4. The fact that Petitioner 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: Petitioner was subject to mandatory detention, Petitioner was granted discretionary parole, ICE exercised its discretionary authority to revoke her parole, and she was re-detained during her expedited removal proceedings and while her asylum claim is being processed.

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Further, several provisions at 8 U.S.C. § 1252 preclude review. First, 8 U.S.C. § 1252(g) bars review of Petitioner's 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 Petitioner's claims because her claims challenge the decision and action to detain her, which arises from the government's decision to commence removal proceedings, thus an "action taken . . . to remove 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. Petitioner's detention comports with due process.

Petitioner's detention does not violate her substantive and procedural due process rights. Petitioner inaccurately argues that the standard for parole under 8 C.F.R. § 212.5(b) is that she is 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 Petitioner's 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*,

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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 (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.

Petitioner's detention here under Section 1225(b) without a pre-detention hearing was lawful. The fact that ICE made an initial determination that Petitioner could be released on parole does not prevent ICE from later revoking that 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 Petitioner's parole during her expedited removal proceedings and while her asylum claim is processed. Thus, ICE had a legitimate, non-punitive interest in her 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 Petitioner's 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

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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, Petitioner's interest in their liberty *generally* does not mean that she possesses a separate or heightened liberty interest in the continuation of her conditional release. Moreover, Petitioner does 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.

Petitioner's release was always subject to conditions of release and she knew that she could be re-detained. Accordingly, Petitioner cannot claim that the government promised her ongoing freedom.

b. The existing procedures are constitutionally sufficient.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's 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

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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. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

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 Petitioner's detention comports with procedural due process.

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CONCLUSION

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

DATED this 12th day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 2,431 words, in compliance with the Local Civil Rules.