

District Judge James L. Robart

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

JOSWAR RODRIGUEZ TORRES,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:25-cv-02697-JLR

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
January 20, 2026

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Joswar Rodriguez Torres pursuant to 8 U.S.C. § 1225(b) as an arriving alien.

I. BACKGROUND

Petitioner is a native and citizen of Venezuela, who sought admission to the United States on or about September 6, 2024, at the Hildago, Texas Port of Entry. Dumo Decl., ¶ 4. The Department of Homeland Security ("DHS") issued Petitioner a notice to appear charging him with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Dumo Decl., ¶ 5; Lambert Decl., Ex. A,

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by undersigned counsel.

1 Notice to Appear. DHS paroled Petitioner into the United States for the purpose of attending his
2 immigration court proceedings. Dumo Decl., ¶ 6.

3 On June 11, 2025, ICE detained Petitioner at a check-in at an ICE office. Dumo Decl., ¶ 6;
4 Lambert Decl., Ex. B, Form I-213; Ex. C, Warrant for Arrest; Ex. D, Notice of Custody
5 Determination. Thereafter, ICE transferred Petitioner to the Northwest ICE Processing Center.
6 Pet., ¶ 19.

7 On October 8, 2025, an immigration judge denied all forms of relief from removal and
8 ordered Petitioner removed to Venezuela. Dumo Decl., ¶ 7; Lambert Decl., Ex. E, Order of the
9 Immigration Judge. Petitioner has a pending administrative appeal of this order before the Board
10 of Immigration Appeals (“BIA”). Dumo Decl., ¶ 7.

11 Petitioner commenced this habeas litigation on December 24, 2025. Dkt. No. 1. He asserts
12 four claims. First, Petitioner challenges his detention pursuant to the Administrative Procedure
13 Act (“APA”), claiming that the revocation of his parole is an abuse of DHS’s discretion because
14 DHS neither provided him with written notification of the reasons for the revocation nor made an
15 individual determination considering the facts and circumstances. Pet., ¶¶ 33-39. Second,
16 Petitioner asserts that his detention violates the APA because it is not in accordance with law and
17 exceeds the official’s statutory authority. Pet., ¶¶ 40-45. Third, he asserts that his detention
18 without a pre-deprivation hearing or individualized determination violates procedural due process.
19 Pet., ¶¶ 46-53. Finally, Petitioner speculates that he may be transferred to a different detention
20 facility, which he asserts would “make communication with counsel extremely difficult.” Pet.,
21 ¶ 54. He alleges that this would be tantamount to a violation of the Fifth Amendment Right to
22 Counsel. Pet., ¶¶ 54-56.

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1 **II. LEGAL STANDARD**

2 “The district courts of the United States ... are courts of limited jurisdiction. They possess
3 only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs.,*
4 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
5 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland*
6 *Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district
7 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
8 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
9 or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
10 969 n.16 (9th Cir. 2004).

11 **III. ARGUMENT**

12 **A. Petitioner is detained pursuant to 8 U.S.C. § 1225(b).**

13 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
14 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
15 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
16 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
17 and expeditiously removing the aliens making such claims from the country.”). Section 1225
18 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
19 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
20 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
21 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
22 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S.
23 281, 287 (2018). Petitioner is an arriving alien. 8 C.F.R. § 1001.1(q) (“Arriving alien” defined as
24 “an applicant for admission coming or attempting to come into the United States at a port-of-entry”

1 and “remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even
2 after any such parole is terminated or revoked.”).

3 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
4 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583
5 U.S. at 283. This parole terminates automatically at the expiration of the time for which parole
6 was authorized, or upon service of a charging document for either expedited removal proceedings
7 under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. 212.5(e)(1); (2)(i).
8 Upon termination of parole, the applicant reverts to the status that he or she had at the time of
9 parole. *See id.*

10 **B. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of
11 subject matter jurisdiction.**

12 Petitioner seeks to challenge his detention on grounds that it violates Section 706(2) of the
13 Administrative Procedure Act (“APA”). Pet., ¶¶ 33-45. These claims are duplicative of his due
14 process claim and should be denied.

15 Petitioner’s APA claims fail because such claims are only available when “there is no other
16 adequate remedy” available, 5 U.S.C. § 704, which is not true here given the availability of habeas
17 claims alleging constitutional or legal error. The Supreme Court has explained that “[w]hen
18 Congress enacted the APA to provide a general authorization for review of agency action in the
19 district courts, it did not intend that general grant of jurisdiction to duplicate the previously
20 established special statutory procedures relating to specific agencies.” *Bowen v. Massachusetts*,
21 487 U.S. 879, 903 (1988).

22 That is true here. A complete system for review of immigration court decisions is part of
23 the statutory scheme governing removal, the Immigration and Nationality Act (“INA”). In
24 *Marcello v. Bonds*, the Supreme Court examined whether the INA’s provisions supplanted the

1 APA and concluded “that Congress was setting up a specialized administrative procedure
2 applicable to deportation hearings” which, while drawing from the APA, was specially “adapt[ed]
3 . . . to the particular needs of the deportation process.” 349 U.S. 302, 308 (1955). And while the
4 federal courts’ habeas jurisdiction to review discretionary immigration determinations is limited,
5 see 8 U.S.C. § 1252(a)(2)(B), that does not mean that habeas remedies are “inadequate” for
6 purposes of the APA, because the APA itself contains a similar provision prohibiting judicial
7 review of “agency action [that] is committed to agency discretion by law,” 5 U.S.C. § 701(a)(2).
8 Accordingly, the APA does not provide a separate avenue for review of Petitioner’s unlawful
9 detention claim.

10 Moreover, to be reviewable under the APA an action must be a “final agency action,”
11 which is to say that it is the “consummation of the agency’s decisionmaking process.” *See Bennett*
12 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of removal
13 proceedings is not within that category because it is only an intermediary step in the process. *See*
14 *Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner’s
15 claims based on alleged APA violations should be denied.

16 **C. Petitioner’s claim concerning a speculative transfer is not justiciable.**

17 Petitioner asserts that he “may” be transferred “to a remove facility far from Tacoma” in
18 violation of his Fifth Amendment Right to Counsel. Pet., ¶ 54. He bases this assertion on the fact
19 that “many other detainees have been moved in this manner, which makes communication with
20 counsel extremely difficult.” *Id.* This claim is completely speculative and not ripe for review.
21 Petitioner does not allege that he has been informed that he will be transferred or that the location
22 that he may be transferred to will not provide the same type of access to counsel available to him
23 at the NWIPC. Therefore, Petitioner’s theoretical transfer is not part of a live controversy before
24 this Court. Thus, this claim should be denied.

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IV. CONCLUSION

Accordingly, Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b).

Federal Respondents do not believe that an evidentiary hearing is necessary.

DATED this 12th day of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Michelle R. Lambert

MICHELLE R. LAMBERT, NYS #4666657

Assistant United States Attorney

United States Attorney's Office

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

Attorneys for Federal Respondents

I certify that this memorandum contains 1,363 words, in compliance with the Local Civil Rules.