District Judge Lauren King

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

ANNELLYCIS DE JESUS ALBORNOZ LIRA, Petitioner, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:25-cv-02713-LK FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: February 2, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner Annellycis de Jesus Albornoz Lira pursuant to 8 U.S.C. § 1225(b)(1) as an arriving alien. After she unsuccessfully applied for admission to the United States in 2024, Petitioner was placed in removal proceedings and paroled into the United States. ICE subsequently enrolled Petitioner in the Alternatives to Detention ("ATD") program, which imposed supervision requirements as terms of Petitioner's parole. ICE arrested her in September 2025 after she had multiple ATD violations.

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

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

In the Amended Petition (Dkt. No. 12), Petitioner incorrectly claims that her re-detention is unlawful and violates due process because she was not provided with written notice and a pre-deprivation hearing. This claim fails to look at this case independently as procedural due process is flexible and should be individually suited to the circumstances at hand. Petitioner asks this Court to release her from immigration detention. Granting such relief would require this Court to ignore Petitioner's repeated violations of the conditions of her release. *Martinez Hernandez v. Andrews*, No. 1:25-cv-01035, 2025 WL 2495767, at *12 (E.D. Cal. Aug. 28, 2025) (finding post-deprivation process adequate due to ATD violations).

Accordingly, this Court should deny the Amended Petition.

II. RELEVANT BACKGROUND

Petitioner is a native and citizen of Venezuela who arrived in the United States at the Paso Del Norte Port of Entry in March 2024. Rodriguez Decl., ¶¶ 3, 4; Dkt. No. 13-1, Ng Decl., Ex. A, Form I-213. Petitioner was not in possession of valid entry or travel documents. Rodriguez Decl., ¶ 4. U.S. Customs and Border Protection ("CBP") issued her a notice to appear that charged of her as removable as an arriving alien under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Rodriguez Decl., ¶ 4; Lambert Decl., Ex. A, Notice to Appear. CBP paroled her into the United States for up to two years. Rodriguez Decl., ¶ 5; Lambert Decl., Ex. B.

In January 2025, Petitioner was enrolled in the ATD program. Rodriguez Decl., ¶ 6; *see also* ICE Portal, Alternatives to Detention (ATD), *available at* https://portal.ice.gov/immigration-guide/atd (last visited Jan. 27, 2026). As part of ATD, Petitioner was required to comply with biometric and reporting obligations. Petitioner failed to complete required ATD biometric check-ins in April, May, and June 2025. Rodriguez Decl., ¶¶ 7-9. ICE detained Petitioner on September 25, 2025, because of her multiple ATD violations. Rodriguez Decl., ¶ 11; Lambert Decl., Ex. C,

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

Warrant for Arrest; Ex. D, Form I-213. She was transported to the Northwest ICE Processing Center, where she is currently in immigration detention. Rodriguez Decl., ¶ 12.

Thereafter, Petitioner's removal proceedings ensued at the Tacoma Immigration Court. On October 29, 2025, Petitioner attended an initial master calendar hearing. Rodriguez Decl., ¶ 14. The next week, an immigration judge denied bond finding that Petitioner is subject to mandatory detention as an arriving alien under 8 U.S.C. § 1225(b). Rodriguez Decl., ¶ 15; Lambert Decl., Ex. E, Order of the Immigration Judge. On November 16, 2025, an immigration judge denied Petitioner's application for relief from removal and ordered her to be removed to Venezuela or, in the alternative, Brazil. Rodriguez Decl., ¶ 16; Lambert Decl., Ex. F, Order. Petitioner has appealed this order, which remains pending before the Board of Immigration Appeals ("BIA"). Rodriguez Decl., ¶¶ 17, 18; Am. Pet., ¶ 32.

Because the removal order is not administratively final, Petitioner remains detained pursuant to 8 U.S.C. § 1225(b)(1) as an arriving alien.

III. LEGAL STANDARD

"The 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*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. 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).

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

IV. ARGUMENT

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

Petitioner is an arriving alien subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). 8 C.F.R. §§ 1.2 (definition of arriving alien), 235.3(c). Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. at 106 ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Relevant here, Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[2] or expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2);

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

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

8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from removal under Section 1229a. Section 1229a governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower, statutorily defined circumstances and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

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

Petitioner does not dispute that she is an arriving alien subject to mandatory detention. Instead, she challenges her re-detention in September 2025 as violative of procedural due process. Pet., ¶¶ 50-53. Petitioner asserts that DHS was required to provide her with written notice and a pre-detention hearing before a neutral arbiter. *Id.*, ¶ 52. Although Federal Respondents acknowledge that district courts have found that due process requires pre-detention hearings prior

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

to re-detention of aliens, as described below, due process did not require a pre-detention hearing here. Accordingly, this Court should not grant Petitioner's request for immediate release from immigration detention.

B. Petitioner's re-detention did not require a pre-deprivation hearing to comply with due process.

A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous was not required prior to her arrest in September 2025. Pet., ¶¶ 50-53. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* 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. As described below, the facts in this situation do not support a blanket requirement of written notice and a hearing prior to Petitioner's detention.

Due process does not mandate a pre-detention hearing here. As to the first *Mathews* factor, 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). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. After all, "[t]he 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 v. Garland*, 53 F.4th 1189, 1206 (9th Cir.

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

2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). 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. Thus, Federal Respondents acknowledge that Petitioner had some liberty interest in her continued freedom from detention while on parole. However, that liberty interest was conditional.

Importantly, as an arriving alien who was paroled into the United States, Supreme Court precedent requires a "legal fiction" to be imposed on Petitioner so that she is treated as at the threshold of entry – as opposed to within this country's borders[.]" *Thuraissigiam*, 591 U.S. at 107. As a result, Petitioner remains in a fundamentally different and less protected position than "those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958).

Turning to the second *Mathews* factor, the risk of a constitutionally significant and erroneous deprivation of Petitioner's liberty did not necessitate a pre-deprivation hearing. The Supreme Court has held that "the Constitution requires some kind of hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing is not appropriate in every situation. *Id.*, at 128 (noting there may be "special case[s]" where a pre-deprivation hearing is impracticable). Petitioner's re-detention qualifies as a special case due to her ATD violations.

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

In *Martinez Hernandez v. Andrews*, the district court found that allegations of ATD violations that "are not obviously pretextual as in *E.A.T.-B*[3]" provided at least an arguable basis "that providing [the petitioner] with notice and a pre-deprivation hearing would have been impracticable and/or would have motivated his flight." *Martinez Hernandez*, 2025 WL 2495767, at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous deprivation could be reduced through a "prompt, post-deprivation process." *Id.* (collecting cases).

There is no need for an evidentiary hearing to determine Petitioner's status as an arriving alien – as that would not change from her initial entry. To wit, a pre-deprivation hearing would be futile as her detention is based on her mandatory detention. An analysis of Petitioner's dangerousness or flight risk is not relevant. However, if this Court were to order a hearing, Petitioner should not be released as her ATD violations provided ICE with a basis to arrest her without notice, and Petitioner should be provided with a post-deprivation hearing.

Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test and procedural safeguards "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 protecting immigration proceedings from unnecessary delay, especially

[3] *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

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

considering Congress's purpose for enacting Section 1225(b) and require parole for release for arriving aliens.

Federal Respondents acknowledge that district courts have found that the revocation of OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Here, Petitioner is subject to mandatory detention as an arriving alien. Where detention is mandatory, a pre-detention hearing would serve no purpose because release is not legally available. *Calderon v. Noem*, No. 2:25-cv-2136, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025) ("The cases cited by Mr. Calderon are inapposite because none of them involved mandatory detention (under the LRA or otherwise).") "Accordingly, a pre-detention hearing could only have one outcome: detention." *Id.*

Accordingly, Petitioner is lawfully detained, and this Court should deny her request for release from immigration custody.

V. CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

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

DATED this 28th 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 2,423 words, in compliance with the Local Civil Rules.