

Magistrate Judge S. Kate Vaughn

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FRANCISCO HILARIO FRANCISCO
FRANCISCO,

Petitioner,

v.

LAURA HERMOSILLO, et al.,

Respondents.

Case No. 2:25-cv-02738-SKV

**PETITIONER'S REPLY TO
RESPONDENTS' RETURN**

Noted for Consideration:
January 20, 2026

I. INTRODUCTION

Petitioner, an  asylum applicant from Guatemala, with no criminal history, who was released on his own recognizance in May 2023, was wrongfully arrested and re-detained by immigration agents the day after Christmas, in the early morning of December 26,

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2025, while he was on his way to work in Salem, Oregon. Petitioner was swiftly taken out of state to a detention center in Tacoma, Washington, where he is currently detained.

Petitioner's detention is unlawful. Petitioner is being deprived of liberty without due process of law. U.S. Const. amend. V. Due Process requires Respondents to provide a pre-deprivation process in which Respondents bear the burden of demonstrating changed circumstances (since Petitioner's initial release) sufficient to indicate that Petitioner is either a flight risk or a danger to the community. No such process was provided.

In addition, Respondents have erroneously determined that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), rather than § 1226(a), and he is therefore (according to Respondents) not eligible for release from custody.

Because Petitioner is unlawfully detained under the laws and constitution of the United States, the Court should issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody. *See* 8 U.S.C. § 2241(c)(3).

II. FACTS

On approximately May 7, 2023, Petitioner was detained at the United States southern border near Sierra Blanca, Texas. Dkt. #9-1 at p. 2. Petitioner was served a notice to appear placing him in removal proceedings under 8 U.S.C. § 1229a, and he was released pursuant to 8 U.S.C. § 1226(a) and 8 CFR § 1236.1(c)(8). Dkt. #9-2 at p. 2; Dkt. #9-3 at p. 2. For a reason unknown to Petitioner, border patrol officials listed a homeless shelter in Chicago, Illinois, as Petitioner's U.S. address. Dkt. #9-1 at p. 4.

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1 After his release, Petitioner went to stay with cousins in Tuscaloosa, Alabama. On June
2 15, 2023, approximately one month after his initial release, Petitioner went to the ICE office in
3 Birmingham, Alabama, and checked in with ICE and provided his address. Dkt. #1-3 at p. 2.

4
5 In July 2023, Petitioner moved to his current address in Salem, Oregon. After Petitioner
6 found someone in Oregon who could speak his Akateko language, Petitioner updated his address
7 with USCIS, ICE, and the immigration court in September 2023. Dkt. #1-4 at p. 2; Dkt. #1-5 at p.
8 2.

9 On October 5, 2023, Petitioner was ordered removed *in absentia* by the immigration court
10 in Chicago, Illinois. One week later, on October 12, 2023, Petitioner filed a defensive I-589
11 application for asylum, and his biometrics were completed on October 30, 2023. Both the I-589
12 receipt notice and the biometrics appointment notice listed Petitioner's correct address in Salem,
13 Oregon. Dkt. #1-6 at p. 2; Dkt. #1-7 at p. 2.

14
15 In May 2024, with the assistance of counsel, Petitioner requested reopening of removal
16 proceedings. Removal proceedings were reopened, and venue was changed from Chicago to
17 Portland, Oregon. Dkt. #1-8 at p. 2. The immigration court order changing venue, which was
18 simultaneously served on ICE counsel, contained Petitioner's correct address in Salem, Oregon.
19
20 *Id.*

21 On July 15, 2024, the Portland immigration court scheduled Petitioner's asylum hearing
22 for October 8, 2027. Dkt. #1-9 at p. 2.

23
24 On December 26, 2025, two years and seven months after he was first released, Petitioner
25 was arrested and re-detained by ICE officers in Salem, Oregon, apparently while they were looking

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1 for someone else. Dkt. #9-4 at p. 3. Petitioner was immediately transferred to the Northwest ICE
2 Processing Center in Tacoma, Washington, where he is currently detained. *Id.* at 4.

3 Petitioner has no criminal record. Dkt. #9-4 at p. 4.

4
5 Petitioner's next hearing in immigration court in Tacoma, Washington, is scheduled for
6 January 22, 2026, at 8:30 AM. *See* attached Exhibit A, Dkt. #10-1 at p. 2. Petitioner's previous
7 hearing on January 14, 2026, was rescheduled because the immigration court was unable to locate
8 an Akateko interpreter.

9
10
11 **III. ARGUMENT**

12 On January 13, 2026, Respondents filed a return to the habeas petition arguing that
13 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), and that due process does
14 not require a pre-deprivation hearing before re-detaining Petitioner, even if he is not a flight risk
15 or danger to the community. Dkt. #7 at p. 5-6.

16
17 **A. Petitioner's substantive and procedural due process rights were violated by**
18 **Respondents when they re-detained him on December 26, 2025.**

19 "No person shall be ... deprived of life, liberty, or property, without due process of law."
20 U.S. Const. amend. V. The right to due process applies to all persons in the United States
21 regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

22 "Freedom from imprisonment-from government custody, detention, or other forms of
23 physical restraint-lies at the heart of the liberty that Clause [Due Process] protects." *Zadvydas*,
24 533 U.S. at 590.

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1 Petitioner is unlawfully detained, and his constitutional rights were violated – and continue
2 to be violated - by Respondents unlawfully re-detaining him without conducting a pre-detention
3 process to determine if there are changed circumstances sufficient to demonstrate Petitioner is
4 either a flight risk or a danger to the community. *See E.A. T.-B. v. Wamsley*, No. 2:25-cv-1192-
5 KKE, 2025 WL 2402130, at *2–6 (W.D. Wash. Aug. 19, 2025); *Ortega v. Bonnar*, 415 F. Supp.
6 3d 963, 969 (N.D. Cal. 2019). As Judge Reinhardt has explained,

8 In the context of immigration detention, it is well-settled that "due process
9 requires adequate procedural protections to ensure that the government's
10 asserted justification for physical confinement outweighs the individual's
11 constitutionally protected interest in avoiding physical restraint." The
12 government has legitimate interests in protecting the public and in ensuring
13 that noncitizens in removal proceedings appear for hearings, but any detention
14 incidental to removal must "bear [a] reasonable relation to [its] purpose."
15 *Zadvydas*, 533 U.S. at 690, quoting, *Jackson v. Indiana*, 406 U.S. 715, 738
(1972).

16 *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up).

17 To be lawful, civil immigration detention requires a valid purpose. In general, courts have
18 recognized two valid purposes for immigration detention – 1) flight risk and 2) danger to the
19 community. *See Zadvydas*, 533 U.S. at 690-691. Immigration detention may not be used as
20 punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest quota
21 is not a valid purpose for detaining a noncitizen. *See Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035
22 (N.D. Cal. 2025). Respondents are violating Petitioner's due process rights by detaining him
23 without a valid purpose and without a pre-detention procedure to determine flight risk or danger
24 to the community. *Id.* at 1034-1035.

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1 To determine what procedures are constitutionally necessary to protect a liberty interest,
 2 courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).
 3 See *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1 (W.D. Wash. Aug.
 4 19, 2025) (collecting cases).; *A.C.J. v. HERMOSILLO et al.*, No. 2:25-cv-02486-DGE, Dkt# 16 at
 5 *6 (W.D. Wash. Jan. 9, 2026).

7 The *Mathews* test requires balancing the private interest affected by government action;
 8 the risk of an erroneous deprivation through the procedures used and the probable value of
 9 additional safeguards; and, finally, the government interest, including the function and the burden
 10 of additional measures. *Mathews*, 424 U.S. at 335.

11 Under *Mathews*, the private interest at stake is personal liberty – the most elemental of
 12 liberty interests. “The interest in freedom from physical detention is “the most elemental of liberty
 13 interests.”” *Perez Camacho v. Hollinshead*, Case No. 1:25-cv-00593-BLW, Dkt. #13 at 20 (D.
 14 Idaho Nov. 19, 2025), quoting, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

16 Second, the risk of an erroneous deprivation through the procedures used is high – frontline
 17 ICE officers are under enormous pressure to detain as many noncitizens as possible; they are not
 18 neutral arbiters. Here, the official report of Petitioner’s re-detention incorrectly states Petitioner
 19 had not updated his address with the immigration court (EOIR), did not have any applications
 20 pending, and that his A-file was not even reviewed prior to his arrest and re-detention. See Dkt. #
 21 9-4 at p. 4. These errors are readily apparent from reviewing the asylum receipt notice, biometrics
 22 notice and immigration court order changing venue from Chicago to Portland. See Dkt. #1-6 at p.
 23 2; Dkt. #1-7 at p. 2; Dkt. #1-8 at p. 2. A pre-detention hearing would have almost certainly cleared

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up this confusion and demonstrated that Petitioner is simply waiting for his asylum hearing, which was already scheduled for October 8, 2027, in Portland, Oregon. *See* Dkt. #1-9 at p. 2.

Finally, under *Mathews*, the agency's interest lies in ascertaining that Petitioner is not a danger to the community and that he will appear at future immigration proceedings. Nothing more. "[D]ue process requires the government to identify some interest beyond its own administrative practices to justify depriving an individual of her liberty without any pre-deprivation protections. Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. Jul 24, 2025). All of the *Mathews* factors weigh in favor of Petitioner's immediate release.

Again, once a noncitizen has satisfied a DHS officer that he is not a flight risk or danger to the community and is released from immigration custody, he may not be re-detained absent an individualized determination that circumstances have changed to such an extent that the noncitizen is a flight risk or danger to the community. *See Y.M.M. v. Wamsley*, Case No. 2:25-cv-02075-TMC, Dkt. #14 at *4 (W.D. Wash. Nov. 6, 2025); *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *Calderon v. Kaiser*, 25-cv-06695-AMO, Order Granting Preliminary Injunction at *3 (N.D. Cal. Aug 22, 2025); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.").

Here, Respondents first determined that Petitioner was not a flight risk or a danger to the community and released him on his own recognizance on May 12, 2023. Dkt. #9-3 at p. 2; 8

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1 C.F.R. § 1236.1(c)(8). At that point, Petitioner had a protected liberty interest in being free from
2 detention. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *Pinchi v. Noem*, 792
3 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Now,
4 in the middle of a nationwide frenzy to publicly detain as many noncitizens as possible,
5 Respondents arrested and re-detained Petitioner on December 26, 2025, apparently while looking
6 for someone else. Dkt. #9-4 at p. 3. Respondents did not provide notice or conduct any type of
7 pre-detention hearing prior to re-detaining Petitioner. Respondents violated Petitioner's
8 constitutionally protected liberty interest when they unlawfully re-detained him on December 26,
9 2025. *See Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt.
10 #14, Report & Recommendation at 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL
11 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and Order at 29-31); *Y.M.M. v. Wamsley*,
12 Case No. 2:25-cv-02075-TMC, Dkt. #14 at *4 (W.D. Wash. Nov. 6, 2025).

15 In arguing that no process is due and that a pre-deprivation hearing is not required,
16 Respondents suggest Judge Evanson's decision in *E.A. T-B. v. Wamsley*, No. 2:25-cv-1192, 2025
17 WL 2402130 (W.D. Wash. Aug. 19, 2025), was wrongly decided. *See* Respondents' Return at 5-
18 6, Dkt. #7 at 5-6. But, Respondents did not appeal that decision, which has been relied on or cited
19 in at least 50 other decisions in just the past few months. *See, e.g., Xie v. Larose*, 3:25-cv-03649-
20 RBM-MSB at *5, n. 4 (S.D. Cal. Jan 13, 2026).

22 In short, Petitioner is unlawfully detained and there is no legal justification for his
23 detention.
24

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B. Petitioner's (unlawful) detention is governed by 8 U.S.C. § 1226(a) and NOT § 1225(b) (mandatory detention).

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado*, in which it reasoned that all individuals who enter the United States without inspection or admission (EWI), regardless of how long the person has been in the United States, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that immigration judges do not have jurisdiction to conduct bond proceedings or grant bond to a person who is present without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 216 (BIA 2025). In so holding, the BIA misconstrued the Supreme Court's analysis in *Jennings v. Rodriguez*, 583 U.S. 281, 287-288 (2018), and failed to address the temporal component of the statutory term "seeking admission." See 8 U.S.C. § 1225(b)(2)(A); *Lopez-Campos v. Rayfield*, et al., Case No. 2:25-cv-12486, Opinion and Order Granting Writ of Habeas Corpus, 2025 WL 2496379 *15-18 (E.D. Mich. Aug.29, 2025). This drastic new BIA interpretation of the immigration statute would render superfluous multiple statutory provisions enacted by Congress, including 8 U.S.C. § 1226(c) (mandatory detention for aggravated felony convictions) and portions of the recently passed Laken Riley Act. *Laken Riley Act ("LRA")*, Pub. L. No. 119-1, 139 Stat 3 (2025), codified at 8 U.S.C. § 1226 (c)(1)I(i) and (ii).

The BIA's flawed analysis, while binding on immigration judges, has been squarely rejected by district courts throughout the country. See, e.g., *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025); *Rodriguez Vasquez v. Bostock, et al.*, 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Ledesma Gonzalez*

1 *v. Bostock*, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Garcia Domingo v. Castro*, 2025 WL
 2 2941217 (D.N.M. Oct. 15, 2025); *Aguilar Merino v. Ripa*, 25-23845-CIV (S.D. Fla. Oct. 15,
 3 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Estrada Elias v.*
 4 *Knight*, No. 1 :25-CV-00594-BLW, 2025 WL 3228262, at *1 (D. Idaho Nov. 19, 2025) ("Dozens
 5 of district courts across the nation-with more each day-have rejected DHS's expansion of §
 6 1225(b)(2)(A)'s mandatory detention to noncitizens already residing here.") (collecting cases
 7 across the country); *but see, Cabanas v. Bondi*, 2025 WL 3171331 at *6 (S.D. Tex. Nov. 13, 2025)
 8 (reasoning § 1225(b)(2)(A) applies to all applicants for admission regardless of length of residence
 9 in US).

10
 11 Because § 1225(b)'s mandatory detention scheme does not apply to Petitioner - who was
 12 initially detained and released under § 1226(a) and who is currently in removal proceedings under
 13 8 U.S.C. § 1229a awaiting an asylum hearing – Petitioner's detention under § 1225(b) is unlawful
 14 and the appropriate remedy is to order his immediate release. *See Perez Camacho v. Hollinshead*,
 15 Case No. 1:25-cv-00593-BLW, Dkt. #13 at 23-24 (D. Idaho Nov. 19, 2025).

16
 17 The only effective remedy for Petitioner's ongoing unlawful detention in violation of his
 18 constitutional right to due process of law is immediate release from custody. Over the course of
 19 the past few months literally hundreds of immigration-related habeas petitions have been granted.
 20 Yet, in open defiance of law and logic, the Tacoma immigration court continues to refuse to
 21 conduct bond hearings absent an express order from a federal court. *See Rodriguez Vazquez v.*
 22 *Hermosillo, et al.*, No. 3:25-cv-05240-TMC, Dkt. #112 at *2, Order on Motion for Further Relief
 23
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(W.D. Wash. Jan. 14, 2026). Here, Petitioner does not seek a bond hearing. Petitioner seeks immediate release from immigration incarceration.

Oral argument:

Petitioner is detained (25 days and counting), and he does not want to delay a decision in this matter. Petitioner believes the legal issues raised in his habeas corpus petition can be decided on the record and briefing before the Court. Should the Court find a hearing is necessary, Petitioner requests it be scheduled as expeditiously as possible.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court issue a writ of habeas corpus, ordering Respondents to immediately release Petitioner from detention, and ordering Respondents to refrain from re-detaining Petitioner absent a pre-detention hearing before a neutral arbiter in which Respondents have the burden of demonstrating changed circumstances sufficient to demonstrate that Petitioner is either a flight risk or a danger to the community.

DATED this 20th day of January 2026

Respectfully submitted,

s/ Hilary Han
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*I certify that this memorandum contains 2,822
words, in compliance with the Local Civil Rules*

CERTIFICATE OF SERVICE

I hereby certify that I filed a copy of the foregoing Petitioner's Reply to Respondents'
Return electronically through the CM/ECF system, which gave service to all counsel of record.

Dated this 20th day of January 2026

s/Philip Smith
Philip Smith, OSB No. 981032

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