

DETAINED

Magistrate Judge Grady J. Leupold

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

ALEXANDER JIMENEZ-GIL,

Petitioner,

v.

PAMELA BONDI, *et al.*;

Respondents.

CASE NO.: 2:26-cv-0002-GJL

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

Noted for Consideration:
January 26, 2026

I. ARGUMENT

A. Petitioner should be afforded a full and fair bond hearing under 8 U.S.C. § 1226(a).

In their Return Memorandum, Respondents make no argument that Petitioner should not be afforded a bond hearing under 8 U.S.C. § 1226(a) and released upon payment of a bond. *See generally* Dkt. 7. Petitioner's release from custody in 2021 on an order of release on recognizance

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(OREC) shows that he was initially detained under § 1226(a) and remains subject to detention under the same statute. *See Castillo v. Wamsley*, 2:25-cv-02054-TMC, 2025 U.S. Dist. LEXIS 255553, at *20-22 (W.D. Wash. Nov. 26, 2025); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [Immigration and Naturalization Service] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) ("Release on recognizance is not 'humanitarian' or 'public benefit' 'parole into the United States' under section 1182(d)(5)(A) but rather a form of 'conditional parole' from detention upon a charge of removability, authorized under section 1226."); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 U.S. Dist. LEXIS 184734, 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) ("Release on recognizance pursuant to § 1226(a)(2)(B) is 'legally distinct' from parole into the United States pursuant to § 1182(d)(5)(A)." (quoting *In re Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023))); *Rosado*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099, at *7 (same). The termination of Petitioner's removal proceedings in 2024 also demonstrates that he has not been "seeking admission" in the time since. *See Castillo*, 2025 U.S. Dist. LEXIS 255553, at *20-22; 8 C.F.R. § 1239.2(e).

At Petitioner's bond hearing on January 5, 2026, the Immigration Judge erroneously applied *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and did not make any alternative finding. *See* Dkt. 6. Therefore, at the least, Petitioner should be entitled to a full and fair bond hearing under § 1226(a) and released upon the payment of a bond amount.

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B. Alternatively, immediate release is appropriate in Petitioner’s case, as he was not afforded a pre-deprivation hearing prior to being re-detained.

In its Return Memorandum, Respondents acknowledge that Petitioner was released from detention on an OREC after his first apprehension by the Department of Homeland Security (DHS) on October 15, 2021. Dkt. 7 at 5; Dkt. 8 at 2; Dkt. 9-4; *see also* Dkt. 1 at 11-12. Respondents do not assert or allege that Petitioner violated any of the conditions on his OREC nor do they assert that Petitioner was provided notice and a hearing before a neutral decisionmaker where ICE demonstrated by clear and convincing evidence that Petitioner was re-detained because he was now a flight risk or a danger to the community.

Respondents also “acknowledge that district courts have recently decided that the revocation of an OREC requires a pre-detention hearing to determine if that noncitizen is a flight risk or a danger to the community. Dkt. 7 at 5; *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); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723, 2025 WL 2637663, at *2-4 (W.D. Wash. Sept. 12, 2025). But they argue that the decisions by the Court “erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8).” Dkt. 7 at 5. However, this Court came the correct conclusion because Respondents argument does not consider “the supremacy of the United States Constitution and the executive branch’s duty to comply with the Due Process Clause of the Fifth Amendment.” *G.S. v. Hermosillo*, C25-2704-TSZ, 2026 U.S. DIST. LEXIS 12874, at *5 n.2 (W.D. Wash. Jan. 22, 2026).

1 This Court has recognized that the three-part *Mathews* test applies when analyzing
2 whether an individual's re-detention comported with due process. *See id.* Under that test, court
3 must consider three factors:

4 First the private interest that will be affected by the official action; second, the risk
5 of an erroneous deprivation of such interest through the procedures used, and the
6 probable value, if any, of additional or substitute procedural safeguards; and
7 finally, the Government's interest, including the function involved and the fiscal
8 and administrative burdens that the additional or substitute procedural requirement
9 would entail.

10 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The *Mathews* test clearly demonstrates that
11 Petitioner's due process rights were violated. Accordingly, Petitioner addresses each factor
12 below.

13 **1. *Petitioner's private interest is weighty.***

14 Petitioner gained a liberty interest in his continued freedom when he was last released
15 from ICE custody on his OREC. He has an exceptionally strong interest in freedom from physical
16 confinement and in a hearing prior to any revocation of his liberty. His "interest in not being
17 detained is 'the most elemental of liberty interests[.]'" *E.A. T.-B.*, 2025 WL 2402130, at *3
18 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from
19 imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*
20 *v. Davis*, 533 U.S. 678, 690 (2001). The Ninth Circuit has held that "[i]n the context of
21 immigration detention, it is well-settled that 'due process requires adequate procedural
protections to ensure that the government's asserted justification for physical confinement
outweighs the individual's constitutionally protected interest in avoiding physical restraint.'"

1 *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d
2 1196, 1203 (9th Cir. 2011)).

3 This principle applies with significant force to Petitioner given that he was already
4 determined to be neither a danger nor a flight risk when he was released from custody in 2021.
5 Dkt. 8 at 6; Dkt. 9-4. He timely filed an application for asylum with the Portland Immigration
6 Court, Exh. A, Stamped First Page of Form I-589,¹ and then again with United States Citizenship
7 and Immigration Services (USCIS), when DHS joined a motion to dismiss his removal
8 proceedings. Exh. B, ASC Appointment Notice for Pending I-589; Dkt. 9-5. Despite having a
9 pending application for removal, DHS re-detained Petitioner on November 20, 2025. Dkt. 8 at 3.

10 A noncitizen released from custody has a protected liberty interest in remaining out of
11 custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on
12 preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released
13 from immigration detention] have a liberty interest in remaining out of custody on bond.”).
14 Petitioner has been released for over four years—his liberty interest continued to grow over time
15 as he continued to live in the United States, attended his immigration court hearings, and then
16 patiently waited for the adjudication of his asylum application filed with USCIS. *See Ramirez*
17 *Tesara*, 2025 WL 2637663, at *3 (“When he was released from his initial detention on parole,
18 Petitioner took with him a liberty interest which is entitled to the full protections of the due process
19 clause.”). Therefore, this factor weighs strongly in Petitioner’s favor.

20
21 ¹ While faint, the stamp indicates that Petitioner’s Form I-589 was filed with the Portland Immigration Court on
October 11, 2022, within one year of his entry into the United States.

1 **2. The absence of a pre-deprivation hearing created an unacceptably high risk of**
2 **erroneous deprivation.**

3 Even when “the Government may believe it has a valid reason to detain Petitioner[s],”
4 that belief “does not eliminate its obligation to effectuate the detention in a manner that
5 comports with due process.” *E.A. T.-B.*, 2025 WL 2402130, at *4.

6 Petitioner’s re-detention must still “bear[] [a] reasonable relation” to a valid government
7 purpose: here, preventing flight or protecting the community against dangerous individuals.
8 *Zadvydas*, 533 U.S. at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406
9 U.S. 715, 738 (1972)); *see also, e.g., Hernandez*, 872 F.3d at 990 (“The government has
10 legitimate interests in protecting the public and in ensuring that noncitizens in removal
11 proceedings appear for hearings, but any detention incidental to removal must bear a reasonable
12 relation to its purpose.” (citation modified)). Only a hearing before a neutral decisionmaker—
13 where ICE must prove that re-detention is justified because Petitioner poses a flight risk or
14 danger—can ensure that this “reasonable relation” to a valid government purpose exists.

15 Respondents never provided Petitioner with a hearing before a neutral decisionmaker
16 where they were required to show that Petitioner violated the conditions of release and is now
17 a flight risk or danger. The Supreme Court has repeatedly explained that an individual is not
18 afforded due process where it is simply the “government enforcement agent” who makes the
19 decision about the propriety of detention. *Coolidge v. New Hampshire*, 403 U.S. 443, 450
20 (1971). That process—which is exactly what occurred here—is a far cry from the hearing before
21 a neutral decisionmaker that due process requires. *See, e.g., Shadwick v. City of Tampa*, 407

1 U.S. 345, 350 (1972) (“Whatever else neutrality and detachment might entail, it is clear that
2 they require severance and disengagement from activities of law enforcement.”).

3 Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention
4 is justified because Petitioner poses a flight risk or danger—can ensure re-detention is
5 effectuated in a manner that does not run afoul of due process. *See Pinchi v. Noem*, 792 F. Supp.
6 3d 1025, 1035 (N.D. Cal. 2025) (declaring, in the case of a detained noncitizen who was
7 redetained without pre-deprivation hearing, that “there is a significant risk that even the two-
8 day curtailment of liberty that [she] already suffered upon her re-detention by ICE was not
9 justified by any valid interest” and concluding that “[p]roviding her with the procedural
10 safeguard of a pre-detention hearing will have significant value in helping ensure that any future
11 detention has a lawful basis”). Therefore, this factor also weighs in favor of Petitioner.

12 ***3. The government has failed to show a countervailing interest against providing a***
13 ***pre-deprivation hearing.***

14 “In immigration court, custody hearings are routine and impose a minimal’ cost.” *See Doe*
15 *v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025).
16 Other courts have found that “the Government’s interest in re-detaining non-citizens previously
17 released without a hearing is low: although it would have required the expenditure of finite
18 resources (money and time)” to provide a pre-deprivation hearing, “those costs are far outweighed
19 by the risk of erroneous deprivation of the liberty interest at issue.” *E.A. T.-B.*, 2025 WL 2402130,
20 at *5; *see also Gonzalez v. Bostock*, 2:25-cv-01404-JNW-GJL, 2025 WL 2841574, at *8 (W.D.

1 Wash. Oct. 7, 2025) (concluding government interest to be low even assuming “requiring
2 predetention process would present some administrative burden”).

3 Finally, “[s]ociety’s interest lies on the side of affording fair procedures to all persons,
4 even though the expenditure of governmental funds is required.” *Lopez v. Heckler*, 713 F.2d 1432,
5 1437 (9th Cir. 1983). This factor also weighs strongly in favor of Petitioner.

6 ***

7 In sum, each *Mathews* factor favors Petitioner and demonstrates that his procedural due
8 process rights were violated when ICE re-detained him.

9 **II. CONCLUSION**

10 The Court should therefore grant Petitioner’s habeas petition ordering his immediate
11 release, and further order that Respondents not re-detain him without advance notice and a pre-
12 deprivation hearing before a neutral decisionmaker. He should be ordered released with the same
13 conditions previously imposed. Alternatively, the Court should grant Petitioner’s habeas petition
14 and order that he be provided with a full and fair bond hearing under 8 U.S.C. § 1226(a).

15 Dated this 25th day of January 2026,

17 /s/ Hilary Smith

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1 *I certify that this memorandum contains 1,931 words, in compliance with the Local Civil*
2 *Rules.*

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