

District Judge Kymberly K. Evanson

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

IBRAHIM SEERAR MAH,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT FIELD
OFFICE DIRECTOR,

Respondent.

Case No. 2:26-cv-00037-KKE

RESPONDENT'S RETURN
MEMORANDUM

Noted for Consideration:
February 2, 2026

Pursuant to this Court's Order (Dkt. No. 4), Respondent submits the following factual background as contained in the records of Petitioner Ibrahim Seerar Mah's immigration case, as well as the relevant detention authority. Petitioner seeks either release from immigration detention or a bond hearing. Pet., at 2.

I. DETENTION AUTHORITY

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, a petitioner must demonstrate

1 that he is being held in custody in violation of the Constitution, laws, or treaties of the United
2 States. *See* 28 U.S.C. § 2241(c)(3).

3 **A. Detention under 8 U.S.C. § 1225(b)**

4 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that
5 the Executive could “expedite removal of aliens lacking a legal basis to remain in the United
6 States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v.*
7 *Thuraissigiam*, 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out
8 patently meritless claims and expeditiously removing the aliens making such claims from the
9 country.”). Section 1225 applies to “applicants for admission” to the United States, who are
10 defined as “alien[s] present in the United States who [have] not been admitted” or noncitizens
11 “who arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. §
12 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by §
13 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory
14 detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N
15 Dec. 216 (BIA 2025).

16 Relevant here, Section 1225(b)(2) is “broader” and “serves as a catchall provision.”
17 *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by §
18 1225(b)(1).” *Id.* Under Section 1225(b)(2), a noncitizen “who is an applicant for admission” is
19 subject to mandatory detention pending full removal proceedings “if the examining immigration
20 officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled
21 to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens “be detained for a
22 proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA
23 2025) (“[F]or aliens arriving in and seeking admission into the United States who are placed
24 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §

1 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
2 *Jennings*, 583 U.S. at 299).

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

10 **B. Detention under 8 U.S.C. § 1226(a)**

11 Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision
12 on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under
13 Section 1226(a), U.S. Department of Homeland Security (“DHS”) may, in its discretion, detain
14 a noncitizen during his removal proceedings, release him on bond, or release him on conditional
15 parole.¹ By regulation, immigration officers can release a noncitizen if he demonstrates that he
16 “would not pose a danger to property or persons” and “is likely to appear for any future
17 proceeding.” 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination
18 (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is
19 issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody
20 redetermination, the immigration judge may continue detention or release the noncitizen on
21 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges
22

23 ¹ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United
24 States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir.
2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not
eligible for adjustment of status under § 1255(a)).

1 have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I.
 2 & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for immigration judges to consider).

3 **C. Discretionary Release from Detention**

4 Aliens may obtain discretionary release from detention on an order of release on
 5 recognizance ("OREC") pursuant to 8 C.F.R. § 1236.1(c)(8). The regulation provides that
 6 "[a]ny officer authorized to issue a warrant of arrest may, in the officer's discretion, release an
 7 alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such
 8 release would not pose a danger to property or persons, and that the alien is likely to appear for
 9 any future proceeding." Section 236.1(c)(9) provides for the revocation of such release: "When
 10 an alien who, having been arrested and taken into custody, has been released, such release may
 11 be revoked at any time in the discretion of the district director, acting district director, deputy
 12 district director, assistant district director for investigations, assistant district director for
 13 detention and deportation, or officer in charge (except foreign), in which event the alien may be
 14 taken into physical custody and detained."

15 There is no statutory or regulatory requirement for a hearing before an individual is re-
 16 detained, and the Supreme Court has warned courts against reading additional procedural
 17 requirements into the Immigration and Nationality Act. *See Johnson v. Arteaga-Martinez*, 596
 18 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
 19 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural
 20 rights] if the agencies have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power*
 21 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

22 Respondent acknowledges that district courts have decided that the revocation of an
 23 OREC requires a pre-detention hearing to determine if that noncitizen is a flight risk or a danger
 24 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); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723, 2025 WL 2637663, at *2-4 (W.D. Wash. Sept. 12, 2025). Respectfully, these decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination set forth in Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)). Both Sections provide that the decisions to release or revoke are discretionary. But Section 1231(c)(8) includes language requiring the officer to decide that the alien “would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” In contrast, Section 1231(c)(9) does not require such a determination and specifically provides that “release may be revoked at any time.”

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Somalia who entered the United States without inspection or parole in March 2023 and was apprehended by U.S. Border Patrol shortly thereafter. Carnevale Decl., ¶ 4. Border Patrol paroled Petitioner into the United States under 8 U.S.C. § 1182(d)(5) for the purpose of criminal prosecution. Carnevale Decl., ¶ 4. U.S. Marshals took custody of Petitioner. Carnevale Decl., ¶ 4.

On April 17, 2023, Petitioner was convicted of violating 8 U.S.C. § 1325 in the U.S. District Court for the District of North Dakota and sentenced to 25 days incarceration. Carnevale Decl., ¶ 5; Lambert Decl., Ex. A, Criminal Judgment.

On May 9, 2023, Petitioner went to the ICE office in San Diego, California, where he was issued a notice to appear, charging him as inadmissible and removable under 8 U.S.C. § 1182(a)(6)(A)(i). Carnevale Decl., ¶ 6; Lambert Decl., Ex. B, Notice to Appear. ICE detained Petitioner and transferred him to the Otay Mesa Detention Center. Carnevale Decl., ¶ 6; Lambert Decl., Ex. C, Warrant for Arrest; Ex. D, Notice of Custody Determination.

1 On August 1, 2023, ICE released Petitioner on an OREC and with enrollment in the
2 Alternative to Detention (“ATD”) program, which required various conditions of release.²
3 Carnevale Decl., ¶ 7; Lambert Decl., Ex. D, OREC.

4 On April 15, 2025, an immigration judge denied all forms of relief from removal and
5 ordered Petitioner be removed to Somalia. Carnevale Decl., ¶ 8. Petitioner has a pending
6 appeal of this order before the Board of Immigration Appeals. Carnevale Decl., ¶ 9.

7 On September 22, 2025, ICE revoked Petitioner’s OREC and took him into custody.³
8 Carnevale Decl., ¶ 10; Lambert Decl., Ex. F, Form I-213; Ex. G, Warrant for Arrest, Ex. H.,
9 Notice of Custody Determination. The OREC revocation was based upon 24 separate ATD
10 check-in violations between December 2025 and the previous day. Carnevale Decl., ¶ 10, Ex.
11 A.

12 Petitioner had a bond hearing scheduled for January 23, 2026, at the Tacoma
13 Immigration Court. Carnevale Decl., ¶ 12. On information and belief, Petitioner withdrew the
14 bond hearing request.

15 III. CONCLUSION

16 Petitioner is lawfully detained pursuant to 8 U.S.C § 1225(b) and the Petition should be
17 denied. However, if this Court should determine that Petitioner’s detention is pursuant to
18 Section 1226(a), then the appropriate remedy would be for this Court to order the immigration
19 court to conduct a bond hearing pursuant to 8 U.S.C. § 1226(a).

20 //

21
22 ² Petitioner may incorrectly argue that DHS’s release and his placement on an OREC in 2023 shows that his
23 detention is discretionary under 8 U.S.C. § 1226(a). However, DHS revisited its legal position on detention and
24 release authorities in July 2025 and determined that Section 1225(b), not Section 1226(a), is the applicable
immigration detention authority for all applicants for admission. See *Rodriguez v. Bostock*, No. 3:25-cv-05240-
TMC, 2025 WL 2782499, at *5 (W.D. Wash. Sept. 30, 2025). Petitioner is an applicant for admission. 8 U.S.C.
§ 1225(b)(2).

³ Undersigned counsel has not located paperwork memorializing the OREC revocation.

1 DATED this 26th day of January, 2026.

2 Respectfully submitted,

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15 *I certify that this memorandum contains 1,710*
16 *words, in compliance with the Local Civil Rules.*