

District Judge Lauren King

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

ALBERTO QUIALA FERNANDEZ,

Petitioner,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT FIELD OFFICE
DIRECTOR,

Respondent.

Case No. 2:26-cv-00043-LK

RESPONDENT'S RETURN
MEMORANDUM

Noted for consideration on:
February 11, 2026

I. INTRODUCTION

This Court should deny Petitioner Alberto Quiala Fernandez's Petition for a Writ of Habeas Corpus. Dkt. 4. Petitioner challenges his immigration detention at the Northwest ICE Processing Center ("NWIPC") and seeks his release or a court-ordered bond hearing while his immigration proceedings are pending. However, U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner under 8 U.S.C. § 1225(b)(2)(A) as an arriving alien. Even if Petitioner were not mandatorily detained as an arriving alien, an immigration judge denied Petitioner's release from detention on bond after finding that ICE had proven that Petitioner is a flight risk by clear and convincing evidence in September 2025. Thus, his continuing detention is justified, and he has

RESPONDENT'S RETURN MEMORANDUM
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1 received sufficient process. Furthermore, Petitioner is not entitled to release because he has not
2 demonstrated that his detention is unconstitutionally indefinite as defined in *Zadvydas v. Davis*,
3 533 U.S. 678 (2001). *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *6 (W.D.
4 Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr.
5 11, 2022).

6 II. BACKGROUND

7 A. 8 U.S.C. § 1225(b)

8 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
9 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
10 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
11 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
12 and expeditiously removing the aliens making such claims from the country.”). Section 1225
13 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
14 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
15 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
16 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
17 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S.
18 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

19 Petitioner is an arriving alien. Thus, “for aliens arriving in and seeking admission into the
20 United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the
21 INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”
22 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (citing *Jennings*, 583 U.S. at 299).

23 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
24 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583

1 U.S. at 283. This parole terminates automatically at the expiration of the time for which parole
2 was authorized, or upon service of a charging document for either expedited removal proceedings
3 under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. §§ 212.5(e)(1);
4 (2)(i). Upon termination of parole, the applicant reverts to the status that he or she had at the time
5 of parole. *See id.*; *see also* 8 C.F.R. § 1.2 (“An arriving alien remains an arriving alien even if
6 paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or
7 revoked.”).

8 **B. Petitioner Alberto Quiala Fernandez**

9 Petitioner, a native and citizen of Cuba, applied for admission to the United States at the
10 port of entry in Laredo, Texas, on or about February 19, 2013. Reed Decl., ¶ 3; Lambert Decl.,
11 Ex. A, Form I-213. Immigration officers determined that Petitioner was inadmissible under 8
12 U.S.C. 1182(a)(7)(A)(i)(I) and issued Petitioner a notice to appear placing him in proceedings in
13 San Antonio Immigration Court. Reed Decl., ¶ 3; Lambert Decl., Ex. B, Notice to Appear.
14 Petitioner was released from detention on parole pursuant to 8 U.S.C. § 1182(d)(5). Reed Decl.,
15 ¶ 3. While Petitioner was scheduled for hearings at the San Antonio Immigration Court in 2016,
16 2019, and 2023, those proceedings did not occur for reasons not reflected in the administrative
17 record. Reed Decl., ¶¶ 5, 6, 10.

18 After being paroled into the United States, Petitioner incurred various criminal convictions.
19 Reed Decl., ¶ 4. In 2018, he filed an application to adjust his status to lawful permanent resident
20 based on the Cuban Adjustment Act with U.S. Citizenship and Immigration Services (“USCIS”).
21 Reed Decl., ¶ 7. In 2020, USCIS denied Petitioner’s application because he had not submitted
22 sufficient evidence regarding his criminal history. Reed Decl., ¶ 9; Lambert Decl., Ex. C,
23 Decision.

1 On February 26, 2025, U.S. Border Patrol encountered Petitioner at the Pacific Highway
2 port of entry in Blaine, Washington. Reed Decl., ¶ 12. Canada had denied Petitioner entry, and
3 he had been returned to the United States. Reed Decl., ¶ 12. Petitioner's parole had expired. Reed
4 Decl., ¶ 12. Border Patrol arrested Petitioner and transferred him to ICE custody at the NWIPC.
5 Reed Decl., ¶ 12; Lambert Decl., Ex. D, Warrant for Arrest; Ex. E, Form I-213; Ex. F, Notice of
6 Custody Determination. Petitioner's removal proceedings were subsequently transferred to the
7 Tacoma Immigration Court. Reed Decl., ¶¶ 13, 14; Lambert Decl., Ex. G, Notice to Appear.

8 On March 26, 2025, ICE advised the immigration judge that Petitioner was a potential
9 member of the class in *Franco-Gonzalez v. Holder*. Reed Decl., ¶ 15. Although Section 1225(b)
10 does not provide for a bond hearing, unrepresented noncitizens may be entitled to certain
11 procedural protections in accordance with an injunction entered in *Franco-Gonzalez v. Holder*,
12 No. 10-cv-2211, 2013 WL 8115423 (C.D. Cal. 2013) (ordering the government to provide bond
13 hearings to class members who have been detained for more than 180 days and legal representation
14 to class members who are incompetent to represent themselves); *see also Franco-Gonzalez v.*
15 *Holder*, 2014 WL 5475097, at *6-12 (C.D. Cal. 2014) (setting forth an evaluation system,
16 including a *pro se* competency standard, to determine whether unrepresented detainees are
17 competent to represent themselves). On March 31, 2025, the immigration judge determined that
18 Petitioner was a class member and appointed a qualified representative in accordance with *Franco-*
19 *Gonzalez*. Reed Decl., ¶ 16.

20 On September 9, 2025, the immigration judge held a *Franco-Gonzalez* bond hearing where
21 the government bore the burden to establish that Petitioner was a flight risk or danger to justify
22 continued detention. Reed Decl., ¶ 24. The immigration judge denied Petitioner's bond request,
23 finding by clear and convincing evidence that ICE had established that Petitioner is a flight risk.
24 Reed Decl., ¶ 24; Lambert Decl., Ex. H, Order of the IJ.

1 After repeated continuance requests and rescheduling by the immigration court,
2 Petitioner's merits hearing was held on September 15, 2025. Reed Decl., ¶ 25. Petitioner had filed
3 various applications for relief from removal, as well as a new application for adjustment of status
4 based on the Cuban Adjustment Act. Reed Decl., ¶ 21.

5 On October 23, 2025, the immigration judge issued a written decision denying Petitioner's
6 applications for relief and ordered that Petitioner be removed to Cuba. Reed Decl., ¶ 26; Lambert
7 Decl., Ex. I, Order. Petitioner appealed this order to the Board of Immigration Appeals ("BIA").
8 Reed Decl., ¶ 27. However, Petitioner has since filed a motion to withdraw his appeal. Reed
9 Decl., ¶¶ 28-30. This motion remains pending with the BIA. Accordingly, the removal order is
10 not administratively final. Reed Decl., ¶ 30.

11 Once the removal order is final, ICE will have to seek third country removal for Petitioner
12 to Mexico because Cuba is not willing to accept Petitioner. Reed Decl., ¶ 31.

13 III. LEGAL STANDARD

14 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
15 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
16 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he
17 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
18 day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C.
19 § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

20 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her
21 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §
22 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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IV. ARGUMENT

A. ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A).

Petitioner is an arriving alien because he applied for admission “coming or attempting to come into the United States at a port-of-entry” in both 2013 and again in 2025. 8 C.F.R. § 1.2 (defining arriving alien). Thus, “for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’” *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (citing *Jennings*, 583 U.S. at 299). Although Petitioner had been paroled into the United States in 2013, his parole had since expired. 8 C.F.R. § 1.2 (“An arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked.”). Thus, Petitioner is not statutorily entitled to a bond redetermination hearing as his detention is mandated pursuant to 8 U.S.C. § 1225(b)(2)(A).

B. Petitioner’s continued detention comports with due process.

“Due process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Petitioner’s continued detention is consistent with due process. Although his detention is now prolonged, an immigration judge held a bond hearing in September 2025 where DHS bore the burden to justify Petitioner’s continued detention. When as here, a petitioner has already had a bond hearing, courts apply the test set forth in *Mathews* to determine whether an additional bond hearing is required. *See, e.g., Ortuno-Perez v. ICE Field Off. Dir.*, No. 23-cv-344, 2023 WL 5807305, at *4 (W.D. Wash. Aug. 1, 2023), *report and recommendation adopted*, 2023 WL 5802516 (W.D. Wash. Sept. 7, 2023). Under *Mathews*, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.*, at 333 (internal quotation marks omitted). This calls for an

1 analysis of (1) “the private interest that will be affected by the official action,” (2) “the risk of an
2 erroneous deprivation of such interest through the procedures used, and probable value, if any, of
3 additional or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

4 The *Mathews* test does not demonstrate that Petitioner’s continued detention violates his
5 constitutional due process rights. With respect to the first factor – the private interest at stake –
6 while it is true as a general matter that freedom from physical restraint “lies at the heart of the
7 liberty that [the Due Process] Clause protects,” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
8 (internal quotation marks omitted), “Congress regularly makes rules that would be unacceptable if
9 applied to citizens.” *Demore v. Kim*, 538 U.S. 510, 522 (2003). Accordingly, while the “Fifth
10 Amendment entitles [noncitizens] to due process of law in deportation proceedings, detention
11 during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.*,
12 at 523. Any assessment of the private interests at stake must therefore account for the fact that the
13 Supreme Court has never held that noncitizens have a constitutional right to be released from
14 custody during the pendency of removal proceedings and has in fact held precisely the opposite.
15 *Id.*, at 530; *Carlson v. Landon*, 342 U.S. 524, 538 (1952).

16 Here, Petitioner has been detained for approximately one year and it has been
17 approximately five months since his bond hearing. The Ninth Circuit has cautioned that “we
18 cannot simply count [petitioner’s] months of detention and leave it at that.” *Rodriguez Diaz v.*
19 *Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). Instead, a court must also consider the process
20 petitioner received during the time he was detained, the further process available to him, and “the
21 fact that his detention was prolonged due to his decision to challenge his removal order.” *Id.* As
22 a *Franco Gonzalez* class member, Petitioner has received additional process not typically available
23 under Section 1225(b) detention. Most notably, the immigration court held an individualized bond
24 hearing that applied a heightened burden of proof on the government.

1 As for the risk of erroneous deprivation of Petitioner's private interest, the bond hearing
2 and other protections afforded to Petitioner as a *Franco Gonzalez* class member sufficiently protect
3 his liberty interest and mitigate the risk of erroneous deprivation. At the September bond hearing,
4 an immigration judge made an individualized custody determination, evaluating flight risk and
5 danger to the community. Furthermore, Petitioner could have appealed the bond decision. At each
6 level of review, Petitioner had the opportunity to be heard by a neutral decisionmaker. *See*
7 *Rodriguez Diaz*, 53 F.4th at 1210. Thus, the risk of erroneous deprivation is low here and this
8 factor weighs in Respondent's favor.

9 The third *Mathews* factor weighs strongly in Respondent's favor. The government has a
10 heightened interest in the immigration detention context. *Rodriguez Diaz*, 53 F.4th at 1206.
11 Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz*
12 recognized that "the government clearly has a strong interest in preventing aliens from
13 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208
14 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether
15 removable aliens must be released on bond during the pendency of removal proceedings."
16 *Rodriguez Diaz*, 53 F.4th at 1208.

17 Accordingly, due process does not require a second bond hearing in this case.

18 V. CONCLUSION

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

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1 DATED this 6th day of February, 2026.

2 Respectfully submitted,

3 s/ Michelle R. Lambert

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14 *I certify that this memorandum contains 2,290*
15 *words, in compliance with the Local Civil Rules.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify that on this date, I electronically filed the foregoing and the following Declaration of Kurtis Reed and Declaration of Michelle R. Lambert with supporting Exhibits A through I, with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the foregoing on the following non-CM/ECF participant, via Certified Mail with return receipt, postage prepaid, addressed as follows:

Alberto Quijale Fernandez, *Pro Se Petitioner*
A# 
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DATED this 6th day of February, 2026.

s/ Stephanie Huerta-Ramirez
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