

District Judge Richard A. Jones

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

MILCIADES JOSE OSORIO MOLINA,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:26-cv-00095-RAJ

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
February 2, 2026.

Pursuant to this Court's Order (Dkt. 2), Federal Respondents submit the following Return Memorandum. Petitioner is an arriving alien who is mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1). Petitioner's detention is lawful and his habeas petition should be denied.

I. LEGAL STANDARD

It is axiomatic that "[t]he 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. Allopeth Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement Laura Hermosillo for Camilla Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
2 day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020).. Title 28 U.S.C.
3 § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

4 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
5 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
6 § 2241(c)(3); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

7 II. DETENTION AUTHORITY

8 A. 8 U.S.C. § 1225(b)

9 8 U.S.C. § 1225 applies to “applicants for admission” to the United States, who are defined
10 as “alien[s] present in the United States who [have] not been admitted” or noncitizens “who
11 arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1).
12 Applicants for admission under 8 U.S.C. § 1225 fall into one of two categories, both of which are
13 subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section
14 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud,
15 misrepresentation, or lack of valid documentation, and certain other aliens designated by the
16 Attorney General in her discretion. Separately, section 1225(b)(2) serves as a catchall provision
17 that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific
18 exceptions not relevant here). *See Jennings*, 583 U.S. at 287. Petitioner does not dispute that he
19 is a noncitizen present in the United States who has not been admitted. Thus, Petitioner is an
20 “applicant for admission” and subject to mandatory detention under Section 1225(b). *See Matter*
21 *of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

22 B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A)

23 While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory
24 detention, they may be subject to parole by the Attorney General or Department of Homeland

1 Security (DHS), and that is not an issue that the Immigration Judge has authority to consider. *See*
2 INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. 212.5(a) (2025) (designating who may
3 exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney
4 General may grant aliens detained under section 235(b)(1) temporary parole into the United States
5 “for urgent humanitarian reasons or significant public benefit” (quoting INA § 212(d)(5)(A), 8
6 U.S.C. § 1182(d)(5)(A)). This discretionary parole is statutorily required to be “temporary parole”
7 under 8 U.S.C. § 1182(d)(5)(A), and the statute does not grant the Attorney General or DHS the
8 discretion to grant indefinite parole to those subject to mandatory detention. Federal regulations
9 govern the expiration of parole and state that where the parole has expired, “no written notice
10 shall be required.” 8 C.F.R. § 212.5(e)(1). An alien who has been paroled into the United States
11 is not considered to have been “admitted.” *See Murillo-Chavez v. Bondi*, 128 F.4th 1076, 1085
12 (9th Cir. 2025).

13 **C. Revocation of Discretionary Release from Detention**

14 “Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release
15 an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such
16 release would not pose a danger to property or persons, and that the alien is likely to appear for
17 any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

18 Section 236.1(c)(9) provides for the revocation of such release: “When an alien who,
19 having been arrested and taken into custody, has been released, such release may be revoked at
20 any time in the discretion of the district director, acting district director, deputy district director,
21 assistant district director for investigations, assistant district director for detention and
22 deportation, or officer in charge (except foreign), in which event the alien may be taken into
23 physical custody and detained.”
24

D. Petitioner Miliciades Jose Osorio Molina

Petitioner is a native and citizen of Venezuela who unlawfully entered the United States most recently without inspection on or about September 23, 2023, and was arrested by non-federal police officers from the Department of Public Safety (“DPS”) in Texas. Declaration of Christopher Hubbard (“Hubbard Decl.”) ¶ 4. On or about September 24, 2023, a Notice to Appear (“NTA”), Form I-862, was issued charging Petitioner with a violation of Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) for being an alien present in the United States without being admitted or paroled. *Id.*; Declaration of Alixandria K. Morris (“Morris Decl.”), Exs. 1-2 (NTA; I-213). In lieu of detention, he was released on his own recognizance (“OREC”) and included several conditions, including a condition to report to ICE offices nearest his location. Hubbard Decl. ¶ 4; Morris Decl., Ex. 3 (OREC).

On March 18, 2024, Petitioner appeared for his first scheduled master calendar hearing with the Immigration Court in Newark, New Jersey. Hubbard Decl. ¶ 5. He was provided an advisal of his rights, given a blank Application for Asylum, Form I-589, and provided with information about his next scheduled hearing. *Id.* On September 3, 2024, Petitioner filed a pro se Motion for Change of Venue (“MCOV”) from the Immigration Court in Newark, New Jersey to the Immigration Court in Seattle, Washington and provided his new address. *Id.* ¶ 6. On September 5, 2024, the Immigration Judge granted that motion. *Id.*

On December 24, 2025, Petitioner was detained for violating the terms of his OREC pursuant to an arrest warrant. *Id.* ¶ 7; Morris Decl., Ex. 4 (Arrest Warrant). Upon review, Petitioner failed to report since his release on or about September 24, 2023. Hubbard Decl. ¶ 7. He was booked into the NWIPC. *Id.*

On December 26, 2025, DHS filed a Motion for Change of Venue with notification of Petitioner’s change in location with the Immigration Court in Seattle, Washington. *Id.* ¶ 8. On

1 January 8, 2026, the Immigration Court located at the NWIPC issued a hearing notice scheduling
2 Petitioner's second master calendar hearing for February 9, 2026. *Id.* No bond hearing has been
3 scheduled as no bond hearing has been requested. *Id.* ¶ 9.

4 III. ARGUMENT

5 A. Petitioner is lawfully detained as an arriving alien pursuant to 8 U.S.C. § 1225(b)(1).

6 It is undisputed that Petitioner applied for admission at a port of entry and is considered
7 an arriving alien. *See* 8 C.F.R. § 1001.1(q) ("Arriving alien" is defined as "an applicant for
8 admission coming or attempting to come into the United States at a port-of-entry" and "remains
9 an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such
10 parole is terminated or revoked."); Hubbard Decl., ¶ 4; Pet., ¶ 21. As an arriving alien, Petitioner
11 is mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1) and the Immigration Judge lacks
12 jurisdiction to redetermine his custody. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B); *see also Matter of X-*
13 *K-*, 23 I&N Dec. at 732 ("There is no question that Immigration Judges lack jurisdiction over
14 arriving aliens who have been placed in section 240 removal proceedings").

15 B. Petitioner's detention comports with due process.

16 Petitioner incorrectly argues that he was entitled to additional process before he was taken
17 into ICE custody upon the filing of a new Notice to Appear. There is no statutory or regulatory
18 requirement for a hearing before an individual in removal proceedings is re-detained, and the
19 Supreme Court has warned courts against reading additional procedural requirements into the
20 Immigration and Nationality Act. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022)
21 (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because
22 "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies
23 have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res.*
24 *Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

1 Furthermore, DHS is not restricted from rearresting noncitizens absent a change in
2 circumstance. The Board of Immigration Appeals (“BIA”) has “recognize[d] counsel’s argument”
3 in this regard; but the BIA did not hold that such changed circumstances were a requirement for
4 rearrest. *In re Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981); *see also Saravia v. Sessions*, 905
5 F.3d 1137, 1145 n.10 (9th Cir. 2018) (“[T]he district court never held that *Sugay* requires these
6 hearings.”). Other courts have recognized that *Sugay*’s dicta is not “binding on ICE.” *Bermudez*
7 *Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19 (S.D.N.Y. Dec. 27, 2018).

8 Federal Respondents acknowledge that district courts have recently decided that the
9 revocation of an OREC requires a pre-detention hearing to determine if that noncitizen is a flight
10 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
11 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate
12 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
13 Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)). Both
14 Sections provide that the decisions to release or revoke are discretionary. But Section 1231(c)(8)
15 includes language requiring the officer to decide that the alien “would not pose a danger to
16 property or persons, and that the alien is likely to appear for any future proceeding.” In contrast,
17 Section 1231(c)(9) does not require such a determination and specifically provides that “release
18 may be revoked at any time.”

19 Petitioner’s re-detention also comports with procedural due process. “Due process is
20 flexible and calls for such procedural protections as the particular situation demands.” *Mathews*
21 *v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner’s detention
22 is consistent with his due process rights. Under *Mathews*, “[t]he fundamental requirement of due
23 process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.*, at
24 333 (internal quotation marks omitted). This calls for an analysis of (1) “the private interest that

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

4 Federal Respondents recognize the “weighty liberty interests implicated by the
5 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
6 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
7 from immigration detention have a protected liberty interest in remaining out of custody, the
8 weight of that liberty must be considered in the broader picture of the immigration system, which
9 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
10 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
11 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that
12 would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
13 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has
14 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
15 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426
16 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during
17 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
18 538 U.S. at 523.

19 Importantly, as an arriving alien who was paroled into the United States, Supreme Court
20 precedent requires a “legal fiction” to be imposed on Petitioner so that he is treated as at the
21 threshold of entry—as opposed to within this country’s borders[.]” *Dep’t of Homeland Sec. v.*
22 *Thuraissigiam*, 591 U.S. 103, 107 (2020). As a result, Petitioner remains in a fundamentally
23 different and less protected position than “those who are within the United States after an entry,
24 irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Additionally,

1 Petitioner's OREC explicitly states that it can be revoked at any time. Morris Decl., Ex. 3, pg. 1
2 (stating in bold font: "NOTICE: Failure to comply with the conditions of this order may result in
3 revocation of your release and your arrest and detention by the Department of Homeland
4 Security"). Thus, Petitioner cannot argue he was promised prolonged liberty.

5 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
6 of Petitioner's liberty without a pre-deprivation hearing here is minimal. Again, as an arriving
7 alien, Petitioner is subject to mandatory detention while he removal proceedings are being
8 resolved, without the opportunity for a bond redetermination. 8 C.F.R. § 1003.19(h)(2)(i)(B);
9 *Matter of X-K-*, 23 I&N Dec. at 732. There is no need for an evidentiary hearing to determine
10 Petitioner's status as an arriving alien – as that would not change from his initial entry. To wit, a
11 pre-deprivation hearing would be futile as his detention is based on his mandatory detention. An
12 analysis of Petitioner's dangerousness or flight risk is not relevant.

13 As for the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test
14 "must account for the heightened government interest in the immigration detention context."
15 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth
16 Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in
17 preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*,
18 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to
19 determining whether removable aliens must be released on bond during the pendency of removal
20 proceedings." *Rodriguez Diaz*, 53 F.4th at 1208.

21 In short, the three *Mathews* factors demonstrate that Petitioner's detention comports with
22 procedural due process.

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IV. CONCLUSION

As an applicant for admission, Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225(b).

Dated this 26th day of January, 2026.

Respectfully submitted,

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s/ Alixandria K. Morris

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I certify that this memorandum contains 2,387 words, in compliance with the Local Civil Rules.