

District Judge Tana Lin

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

JAVIER EDUARDO MARQUEZ RUJANO,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, NORTHWEST
DETENTION CENTER,¹

Respondents.

Case No. 2:26-cv-00325-TL

FEDERAL RESPONDENT'S
RETURN MEMORANDUM

Noted for Consideration:
March 9, 2026.

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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1 **I. INTRODUCTION**

2 Petitioner Javier Eduardo Marquez-Rujano seeks habeas relief from his continued pre-
3 order detention at the Northwest ICE Processing Center (“NWIPC”). Dkt. 3 (“Pet.”). But Congress
4 has mandated pre-order detention in such cases.

5 Petitioner’s custody is neither indefinite nor unauthorized. Under 8 U.S.C. § 1225(b)(1),
6 applicants for admission who are determined to be inadmissible must be detained pending the
7 completion of their removal proceedings, a framework the Supreme Court has confirmed
8 “mandate[s] detention” during that period. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

9 Petitioner entered the United States without admission, was charged as inadmissible, and
10 remains subject to an administratively non-final removal order. His present custody flows directly
11 from the statute. Because he cannot show that his detention violates the Constitution or laws of the
12 United States—and because his additional claims regarding his arrest and conditions of
13 confinement fall outside the narrow scope of habeas review—the Petition should be denied.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 **A. Section 1225(b) Detention**

16 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
17 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
18 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
19 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
20 and expeditiously removing the aliens making such claims from the country.”). Section 1225
21 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
22 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
23 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
24 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by

§ 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”).

1. Section 1225(b)(1)

Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen “described in” Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security – that is, any noncitizen not “admitted or paroled into the United States” and “physically present” fewer than two years – who is inadmissible under Section 1182(a)(7) at the time of “inspection.” *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to § 1182(a)(7). The Attorney General’s or Secretary’s authority to “designate” classes of noncitizens as subject to expedited removal is subject to his or her “sole and unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); *see also Am. Immigr. Laws. Ass’n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS “to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who

1 have not affirmatively shown, to the satisfaction of an immigration officer, that they have been
 2 physically present in the United States continuously for the two-year period immediately preceding
 3 the date of the determination of inadmissibility,” who were not otherwise covered by prior
 4 designations. *Id.*, at 8139-40.

5 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if
 6 a noncitizen indicates an intention to apply for asylum² or expresses a fear of persecution, torture,
 7 or return to the noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If
 8 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
 9 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
 10 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum
 11 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal
 12 proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. §
 13 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

14 Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under
 15 Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear
 16 and conducted before an immigration judge, during which the noncitizen may apply for relief or
 17 protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,
 18 statutorily defined circumstances – typically to individuals apprehended at or near the border who
 19 lack valid entry documents or commit fraud upon entry – and allows for their removal without a
 20 hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS

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 22
 23 ² Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except
 24 if the noncitizen can demonstrate “extraordinary circumstances” that justify moving that deadline. *Id.*
 § 1558(a)(2)(D).

1 has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of*
2 *E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

3 2. Section 1225(b)(2)

4 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S.
5 at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under Section
6 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to mandatory detention
7 pending full removal proceedings “if the examining immigration officer determines that [the] alien
8 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
9 1225(b)(2)(A); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb.
10 6, 2026) (affirming the government’s position that aliens who have not been admitted or are not
11 entitled to be admitted to the United States are “applicants for admission” who are subject to
12 mandatory detention under Section 1225(b)(2)(A)); *but see Rodriguez Vazquez v. Bostock*, 802 F.
13 Supp. 3d 1297 (W.D. Wash. 2025) (finding that detention pursuant to 8 U.S.C. § 1225(b)(2) of the
14 Bond Denial Class is unlawful).

15 As the Fifth Circuit recently found, aliens who are present without admission in the United
16 States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-Mendez*, 2026
17 WL 323330, at *4. The court clarified that an “applicant for admission” is a person “seeking
18 admission” regardless of whether that person is actively engaged in admissions procedures when
19 detained. *Id.*, at 5-6.

20 B. Discretionary Release

21 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
22 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583
23 U.S. at 283. Parole automatically terminates if the noncitizen departs from the United States or “at
24 the expiration of the time for which parole was authorized,” and “no written notice shall be

1 required” for automatic termination. 8 C.F.R. § 212.5(e)(1). In all other cases, parole is terminated
 2 when the purpose for which parole was authorized has been accomplished or an authorized DHS
 3 official decides that “neither humanitarian reasons nor public benefit warrants the continued
 4 presence of the alien in the United States.” 8 C.F.R. § 212.5(e)(2)(i); *see also* 8 U.S.C. §
 5 1182(d)(5)(A) (“[W]hen the purposes of such parole shall, in the opinion of the Secretary of
 6 Homeland Security, have been served the alien shall forthwith return or be returned to the custody
 7 from which he was paroled[.]”). In these circumstances, written notice of the termination is
 8 required. When a charging document is served on the alien, the charging document serves as the
 9 notice of termination of parole. 8 C.F.R. § 212.5(e)(2)(i). Upon termination of parole, the applicant
 10 reverts to the status that he or she had at the time of parole. 8 C.F.R. § 212.5(e).

11 Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision on
 12 whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under Section
 13 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release
 14 him on bond, or release him on conditional parole.³ By regulation, immigration officers can release
 15 a noncitizen if he demonstrates that he “would not pose a danger to property or persons” and “is
 16 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). This discretionary release is
 17 done with the issuance of an order of release on recognizance (“OREC”) issued by DHS.

18 A noncitizen may also request a custody redetermination (i.e., a bond hearing) by an
 19 immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a);
 20 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination hearing, the
 21 immigration judge may continue detention or release the noncitizen on bond or conditional parole.

22 _____
 23 ³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States
 24 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 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding
2 whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006)
3 (listing nine factors for immigration judges to consider).

4 However, the release of a noncitizen on OREC prior to July 2025 should not determine
5 whether that person's detention authority is currently governed by Section 1225(b) or Section
6 1226(a). On July 8, 2025, DHS issued a memorandum to ICE employees explaining that DHS had
7 revisited its legal position on detention and release authorities. *Rodriguez v. Bostock*, 802 F. Supp.
8 3d 1297, 1308 (W.D. Wash. 2025). The memorandum defined an "applicant for admission" as
9 "an alien present in the United States who has not been admitted or who arrives in the United
10 States, whether or not at a designated port of arrival. *Id.* (citing 8 U.S.C. § 1225(a)(1)). Prior to
11 July 2025, DHS allowed discretionary release of aliens that fit the definition of an applicant for
12 admission pursuant to 8 C.F.R. § 1236.1(c)(8), instead of only utilizing parole.

13 But the memorandum clarified, "Effective immediately, it is the position of DHS that such
14 aliens are subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE
15 custody except by [8 U.S.C. § 1182(d)(5)]." *Rodriguez*, 802 F. Supp. 3d at 1308. However, DHS's
16 prior practice of OREC releases for applicants for admission does not mean that those aliens are
17 no longer applicants for admissions. *Buenrostro-Mendez*, 2026 WL 323330, at *8 ("While that is
18 true, the government's past practice has little to do with the statute's text. The text says what it
19 says, regardless of the decisions of prior Administrations. Years of consistent practice cannot
20 vindicate an interpretation that is inconsistent with a statute's plain text.").

21 While Federal Respondent acknowledges that courts in this District have found that a
22 person released on OREC to not be detained under Section 1225(b), Petitioner's claim in this
23 litigation only concerns the legality of Petitioners' re-detentions. *See, e.g., Aslan v. Wamsley*, No.
24 2:25-cv-02698-JNW, 2026 WL 238675, at *2 (W.D. Wash. Jan. 29, 2026) (finding that the

detention of a petitioner previously released on OREC is governed by Section 1226(a)).

C. Petitioner Javier Eduardo Marquez-Rujano

Petitioner Javier Eduardo Marquez-Rujano is a native and citizen of Venezuela, born in 1999. Declaration of Gilbert Bolof (“Bolof Decl.”) ¶ 3. On November 25, 2023, Petitioner entered the United States from Mexico at or near Eagle Pass, Texas, without first being admitted or paroled by an Immigration Officer. *Id.* ¶ 4. He was detained by Border Parol shortly after entry. *Id.* On November 26, 2023, Border Patrol personally served Petitioner with a Notice to Appear (“NTA”). *Id.* ¶ 5; Declaration of Alixandria K. Morris (“Morris Decl.”), Exs. 1-2 (NTA; I-213).

Petitioner was released on an Order of Recognizance (“OREC”) due to lack of bed space. Bolof Decl. ¶ 5; Morris Decl., Ex. 3. The NTA set an initial hearing for June 20, 2024. Bolof Decl. ¶ 5. On February 7, 2024, the NTA was filed with the Executive Office for Immigration Review (“EOIR”). *Id.* ¶ 6. On November 18, 2024, Petitioner filed Form I-589, Application for Asylum and Withholding of Removal, with EOIR. *Id.* ¶ 7. On December 2, 2025, Petitioner was arrested by Immigration Officers in Portland, Oregon and booked into NWIPC the same day. *Id.* ¶ 8.

On January 21, 2026, DHS filed a Motion to Pretermitt Petitioner’s applications for immigration relief. *Id.* ¶ 9. On February 12, 2026, an Immigration Judge granted DHS’s Motion to Pretermitt and Petitioner was ordered removed to Ecuador. *Id.* ¶ 10. Petitioner reserved appeal with an appeal to the Board of Immigration Appeals (“BIA”) due no later than March 16, 2026. *Id.* No appeal has been filed with the BIA. *Id.*

III. LEGAL STANDARD

“The 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. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland*

1 *Sec. v. Thuraissigiam*, 591 U.S. at 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts
 2 with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden
 3 is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or
 4 treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969
 5 n.16 (9th Cir. 2004).

6 IV. ARGUMENT

7 A. Petitioner is Lawfully Detained

8 Petitioner Javier Eduardo Marquez-Rujano, a native and citizen of Venezuela, entered the
 9 United States from Mexico at or near Eagle Pass, Texas on November 25, 2023, without being
 10 admitted or paroled by an immigration officer. Bolof Decl. ¶ 4. He was charged as inadmissible
 11 under 8 U.S.C. § 1182(a)(6)(A)(i), and personally served with a Notice to Appear. *Id.* ¶ 5; Morris
 12 Decl., Exs. 1-2. Although he was initially released on an Order of Recognizance due to bed space
 13 limitations, the charge rendered him an applicant for admission subject to mandatory detention
 14 under 8 U.S.C. § 1225(b)(1)⁴. *See* Bolof Decl. ¶ 5.

15 Under 8 U.S.C. § 1225(b)(1), an alien who has entered without inspection is treated as an
 16 “applicant for admission” and, if found inadmissible, is subject to expedited removal and
 17 mandatory detention pending removal proceedings or credible fear determination. *Thuraissigiam*
 18 *v. U.S. Dep’t of Homeland Sec.*, 591 U.S. 103, 109 n.2 (2020).

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 22 ⁴ At the time of Petitioner’s apprehension near the southern border within 100 miles of the United States border and
 23 within 14 days of entry, DHS had designated aliens in these circumstances for expedited removal under Section
 24 1225(b)(1). *Thuraissigiam v. U.S. Dep’t of Homeland Sec.*, 591 U.S. 103, 109 n.2 (2020); *see Designating Aliens*
for Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004) (designating inadmissible aliens encountered within
 100 miles of the international land border and within 14 days of entry for expedited removal and detaining them
 pending proceedings).

1 Because Petitioner entered without admission or parole, was encountered in this
2 geographic and temporal window, and is inadmissible, he falls squarely within the statutory and
3 regulatory framework of 8 U.S.C. § 1225(b)(1).

4 His proceedings were properly commenced upon filing of the NTA with the Executive
5 Office for Immigration Review on February 7, 2024. Bolof Decl. ¶ 6. After Petitioner filed an
6 asylum application, DHS moved to pretermitt that relief. *Id.* ¶¶ 7, 9. On February 12, 2026, an
7 Immigration Judge granted DHS's motion and ordered Petitioner removed to Ecuador. *Id.* ¶ 10.
8 Although he reserved appeal, no appeal has yet been filed with the Board of Immigration Appeals
9 (deadline March 16, 2026). *Id.*

10 Because Petitioner entered without admission, was properly charged as inadmissible, and
11 his removal order is not yet administratively final, he remains subject to detention pursuant to 8
12 U.S.C. § 1225(b)(1). Thus, his continued custody is both mandatory and lawful.

13 **B. Re-Detention Analysis (Ground One, Pg. 10)**

14 Petitioner asserts that his re-detention violates due process because he did not receive
15 written notice and a hearing prior to being detained. Pet., pg. 10, Ground One. However, there is
16 no such blanket requirement. Instead, “[d]ue process is flexible and calls for such procedural
17 protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319 (1976).
18 Petitioner was released on OREC. Bolof Decl. ¶ 5.

19 A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous
20 was not required prior to Petitioner's arrest. “Due process is flexible and calls for such procedural
21 protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).
22 *Mathews* calls for an analysis of (1) “the private interest that will be affected by the official action,”
23 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and probable
24

1 value, if any, of additional or substitute procedural safeguards,” and (3) the Government’s interest.

2 *Id.* at 334-35.

3 Federal Respondent recognizes that some courts in this District, applying the balancing
4 framework set forth in *Mathews*, have concluded that revocation of OREC (or parole) may, in
5 particular circumstances, require a pre-deprivation hearing to assess whether the noncitizen poses
6 a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025
7 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130
8 (W.D. Wash. 2025).

9 At the same time, courts in this District have also recognized that under different factual
10 circumstances, due process does not require a pre-detention hearing. *Garcia Gabriel v. Hermosillo*,
11 No. 2:25-CV-02594-DGE-GJL, 2026 WL 194233, at *6 (W.D. Wash. Jan. 26, 2026); *Cotoc Yac*
12 *De Yac v. Hermosillo*, No. 2:25-CV-02593-DGE-TLF, 2026 WL 124334, at *5 (W.D. Wash. Jan.
13 16, 2026).

14 Taken together, these decisions underscore that there is no categorical rule requiring a pre-
15 deprivation hearing in every case involving revocation of OREC or parole. Rather, the inquiry is
16 necessarily fact-specific and governed by the balancing analysis mandated by *Mathews*. Whether
17 additional process is required depends on the particular circumstances presented, including the
18 private interest at stake, the risk of erroneous deprivation, and the Government’s interests. If a pre-
19 deprivation hearing were uniformly required, the careful, case-by-case application of the *Mathews*
20 factors would be unnecessary.

21 Applying that framework here, and weighing the *Mathews* factors in light of the facts set
22 forth in the Declaration of Gilbert Bolof, Federal Respondent respectfully submit that the
23 circumstances presented in this case did not necessitate a pre-detention hearing. *See generally*
24 Bolof Decl.

1 **C. Conditions of Confinement (Ground Two, pg. 10)**

2 This Court should not consider Petitioner's conditions of confinement as part of a 28 U.S.C.
3 § 2241 habeas corpus petition. Challenges to the legality or duration of confinement should be
4 pursued in a habeas proceeding, *see Crawford v Bell*, 599 F.2d 890, 891 (9th Cir. 1979), while
5 challenges to conditions of confinement should be pursued in a civil rights action. *See Badea v.*
6 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Petitioner alleges that his detention is unlawful because
7 the medical treatment available at the NWIPC is inadequate to properly treat his medical
8 conditions or that the NWIPC has refused to treat his medical condition(s). Pet., pg. 10, Ground
9 Two.

10 Although the relief he seeks is release from detention, his claim in Ground Two is squarely
11 focused on alleged constitutional violations caused by the adequacy of his medical treatment at
12 NWIPC.

13 To be clear, the Petition asserts that NWIPC is not capable (or not willing) of providing
14 adequate medical care to him. Pet., pg. 10. His petition does not allege that detention *at any facility*
15 would be unlawful or unconstitutional. As such, this is a challenge to the conditions of Petitioner's
16 confinement at the NWIPC and not a direct challenge to the legality or duration of his confinement.
17 Thus, "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially
18 mandated change in conditions and/or an award of damages, but not release from confinement."
19 *Crawford*, 599 F.2d at 891.

20 This Court should decline to extend such consideration to the claims presented here. Courts
21 have undertaken review of medical-care or conditions-of-confinement claims in habeas
22 proceedings only in rare and extraordinary circumstances, such as during the unprecedented
23 conditions presented by the COVID-19 pandemic or where a petitioner demonstrates a truly
24 extreme or life-threatening medical condition. Nothing in Petitioner's allegations, even if accepted

as true, approaches the type of circumstances that warranted review in cases such as *Sorio v. Hermosillo*, No. 2:25-CV-02492-TL, 2026 WL 413530, at *2 (W.D. Wash. Feb. 13, 2026), or *Dawson v. Asher*, No. 20-cv-0409, 2020 WL 1704324, at *8-9 (W.D. Wash. Apr. 8, 2020) (addressing COVID-19-related conditions under 28 U.S.C. § 2241).

Petitioner seeks his release from detention if this Court were to find a substantive due process violation. Pet., pg. 10. However, he fails to demonstrate that even if the alleged due process violations were established, they would warrant or require immediate release “as opposed to injunctive relief that would leave him detained while ameliorating any unconstitutional conditions at the NWIPC.” *Ortiz v. Barr*, No. 20-cv-497, 2020 WL 13577427, at *7 n.8 (W.D. Wash. April 10, 2020); accord *Doe v. Bostock*, No. 24-cv-326, 2024 WL 3291033, at *8 (W.D. Wash. Mar. 29, 2024). If this Court were to find that the length of his detention has become unreasonable, then this Court should order the immigration court to hold a bond hearing that would be available to him under Section 1226(a). Therefore, even if this Court were to find a due process violation concerning Petitioner’s medical care or the prolonged nature of his detention, immediate release would not be an appropriate form of relief.

If the Court were inclined to review this claim, Federal Respondent respectfully requests the opportunity to submit a supporting medical declaration addressing Petitioner’s allegations. Federal Respondent requires additional time to procure a declaration from appropriate medical personnel to ensure the Court has a complete and accurate record before it.

D. Fourth Amendment Claims (Ground Three, pg. 10)

Petitioner’s fourth amendment claims concerning his arrest by immigration officers are not cognizable in this habeas action. See Pet., pg. 10, Ground Three; see also *Labrador Abadin v. Noem*, No. 25-cv-2411, 2026 WL 217148 (W.D. Wash. Jan. 28, 2026) (a petition under 28 U.S.C. § 2241 “is not the appropriate mechanism to challenge the legality of [an] arrest”); *Marroquin*

1 *Salazar v. Noem*, No. 5:25-cv-02367, 2025 WL 3535050, at *1 (C.D. Cal. Dec. 8, 2025).

2 Even if Petitioner could establish a Fourth Amendment violation, which Federal
3 Respondent does not concede, habeas is not the proper vehicle, and release would not be
4 appropriate relief. Because removal proceedings are underway, Petitioner's current custody flows
5 from the Immigration and Nationality Act ("INA"), *see* 8 U.S.C. § 1225(b), not from his arrest.
6 Section 2241 permits a petitioner to challenge only his present custody, 28 U.S.C. § 2241(c)(3),
7 and "the essence of habeas corpus is an attack by a person in custody upon the legality of that
8 custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Any challenge to the arrest is therefore
9 moot. *See Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990); *James v. Reese*, 546 F.2d 325,
10 328 (9th Cir. 1976).

11 The INA, 8 U.S.C. § 1101 et seq., entrusts the Executive with removing inadmissible and
12 deportable noncitizens. Detention serves to prevent flight and ensure successful removal. *Demore*
13 *v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long recognized that removal
14 proceedings "would be in vain if those accused could not be held in custody pending the inquiry."
15 *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Moreover, this Court lacks jurisdiction
16 over claims that must be raised in immigration proceedings. Congress "consolidated judicial
17 review of immigration proceedings into one action in the court of appeals." *Guerrero-Lasprilla v.*
18 *Barr*, 589 U.S. 221, 233 (2020); *see* 8 U.S.C. § 1252(a)(5), (b)(9). Together, these provisions
19 channel review of "all questions of law and fact" arising from removal-related activity into a
20 petition for review. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). Claims "inextricably
21 linked" to removal are therefore barred. *Id.*

22 Finally, the remedy for an unlawful arrest is suppression of evidence, not release from
23 custody. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984); *United States v. Garcia-Beltran*,
24 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935 (2006); *Martinez-Medina v. Holder*,

1 673 F.3d 1029, 1033-34 (9th Cir. 2011). The “body” or identity of a respondent “is never itself
2 suppressible as a fruit of an unlawful arrest.” *Lopez-Mendoza*, 468 U.S. at 1039; *see Stone v.*
3 *Powell*, 428 U.S. 465, 485 (1976); *Garcia-Beltran*, 443 F.3d at 1132.

4 Numerous courts across the country, including in this district, have rejected habeas claims
5 seeking release based on allegedly unlawful immigration arrests. *See e.g., Medina v. U.S. Dep’t of*
6 *Homeland Sec.*, 2017 WL 1101370, at *1-2 (W.D. Wash. Mar. 24, 2017); *Amezcu-Gonzalez v.*
7 *Lobato*, 2016 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016), report and recommendation adopted,
8 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016); *Marvan v. Slaughter*, 2025 WL 1940043, at *3-
9 4 (D. Mont. July 15, 2025); *H.N. v. Warden, Stewart Det. Ctr.*, 2021 WL 420323 (M.D. Ga. Sept.
10 15, 2021); *Nyuwa v. Gurule*, 2014 WL 12984435, at *1 (D. Ariz. June 13, 2014); *Alonso-Portillo*
11 *v. Bondi*, 2025 WL 2483393 (S.D. Ohio Aug. 28, 2025); *Rodrigues De Oliveira v. Joyce*, 2025
12 WL 1826118 (D. Me. July 2, 2025).

13 Accordingly, because Petitioner seeks release based on his arrest, there is no basis for relief,
14 and his Fourth Amendment claim should be denied.

15 **V. CONCLUSION**

16 For the foregoing reasons, Federal Respondent respectfully requests that this Court deny
17 the Petition.

18 //

19 //

20 //

1 Dated this 3rd day of March, 2026.

2 Respectfully submitted,

3 s/ Alixandria K. Morris

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14 I certify that this memorandum contains 4,371
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 on today's date, I electronically filed the foregoing 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 on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, postage prepaid, marked "Legal Mail, Open in Presence of Detainee," addressed as follows:

Javier Eduardo Marquez Rujano, Pro Se Petitioner
A#
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 3rd day of March, 2026.

s/ Hung Nguyen
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