

The Honorable Tana Lin

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

OSWAL ORTIZ,

Petitioner,

v.

LAURA HERMOSILLO, Seattle Field Office
Director, Enforcement and Removal Operations,
United States Immigration and Customs
Enforcement (ICE); BRUCE SCOTT, Warden,
Northwest ICE Processing Center; KRISTI
NOEM, Secretary, United States Department of
Homeland Security; PAMELA BONDI, United
States Attorney General; and UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY,

Respondents.

Case No. 2:26-cv-00384-TL

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Pursuant to this Court's Order (Dkt. 2), Federal Respondents submit the following factual background as contained in the records of Petitioner Orval Ortiz's immigration case, as well as the relevant detention authority.

I. DETENTION AUTHORITY

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear

1 federal habeas petitions. To warrant a grant of habeas corpus, a petitioner must demonstrate that
2 he is being held in custody in violation of the Constitution, laws, or treaties of the United States.
3 *See* 28 U.S.C. § 2241(c)(3).

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

15 Petitioner is an applicant for admission. “[F]or aliens arriving in and seeking admission
16 into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A)
17 of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have
18 concluded.’” *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (quoting *Jennings*, 583 U.S. at
19 299); *see also Buenrostro-Mendez v. Bondi*, No. 25-20496, -- F.4th --, 2026 WL 323330, at *1 (5th
20 Cir. Feb. 6, 2026) (affirming the government’s position that noncitizens who have not been
21 admitted or are not entitled to be admitted to the United States are “applicants for admission” who
22 are subject to mandatory detention under Section 1225(b)(2)(A)).

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 was
2 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.*

6 II. FACTUAL BACKGROUND

7 Petitioner is a native and citizen of Venezuela. Soraghan Decl., ¶ 3. Petitioner entered the
8 United States from Mexico at or near Eagle Pass, Texas, without first being admitted or paroled
9 by an immigration officer on September 11, 2023. Soraghan Decl., ¶¶ 3-4. Soon thereafter, the
10 Border Patrol served Petitioner with a Notice to Appear that charged him as inadmissible under
11 INA § 212(a)(6)(A)(i) as a noncitizen present in the United States without being admitted or
12 paroled, or who arrived in the United States at any time or place other than designated by the
13 Attorney General. Soraghan Decl., ¶ 5; Dkt 7-1 (Notice to Appear). Petitioner was released on an
14 Order of Release on Recognizance (“OREC”), with one condition being that he not violate any
15 local, state, or federal laws. Soraghan Decl., ¶ 6; Strong Decl., Ex. A (OREC).

16 On January 3, 2024, Petitioner filed an application for relief with the immigration court.
17 Soraghan Decl., ¶ 7. On September 6, 2024, Petitioner was arrested by the Tukwila Police
18 Department and charged with Assault First Degree, later amended to Assault Second Degree,
19 before the King County Superior Court. Soraghan Decl., ¶ 8. The disposition in Petitioner’s
20 criminal arrest remains pending. Soraghan Decl., ¶ 8.

21 On October 15, 2025, Petitioner reported in person to ICE Enforcement and Removal
22 Operations (ERO) in Seattle. Soraghan Decl., ¶ 9. ERO’s records checks included Petitioner’s
23 criminal arrest and pending assault case. Soraghan Decl., ¶ 9. Petitioner was taken into ICE
24 custody based on his violation of the terms and conditions of his OREC. Soraghan Decl., ¶ 9. On

1 the same day, Petitioner was transported to the NWIPC in Tacoma, Washington. Soraghan Decl.,
2 ¶ 10.

3 Following his detention, On December 16, 2025, Petitioner appeared *pro se* for an initial
4 master calendar hearing before the immigration judge. Soraghan Decl., ¶ 11. The immigration
5 judge granted Petitioner's request for a continuance to retain counsel. Soraghan Decl., ¶ 11. On
6 January 7, 2026, Petitioner appeared for his continued master calendar hearing. Soraghan Decl.,
7 ¶ 12. Petitioner retained counsel who was unavailable on January 7. Soraghan Decl., ¶ 12. The
8 immigration judge granted Petitioner's request for a continuance. Soraghan Decl., ¶ 12. On
9 January 13, 2026, Petitioner appeared with counsel for his continued master calendar hearing.
10 Soraghan Decl., ¶ 13. The immigration judge set finals merits hearing on his application for relief
11 for February 2, 2026. Soraghan Decl., ¶ 13.

12 On January 22, 2026, Petitioner appeared with counsel for a bond hearing. Soraghan Decl.,
13 ¶ 14. The immigration judge specifically "[found] that Respondent is not a member of the
14 *Rodriguez-Vazquez* or *Maldonado-Bautista* classes. Respondent was apprehended by immigration
15 officers at the US/Mexico border on the same day he initially entered the US without admission.
16 No alternative findings have been made." Soraghan Decl., ¶ 14; Strong Decl., Ex B (Order of the
17 Immigration Judge). Petitioner was found subject to mandatory detention under Matter of Q. Li, 29
18 I&N Dec. 66 (BIA 2025). Soraghan Decl., ¶ 14; Ex. C.

19 On January 26, 2026, Petitioner's counsel motioned the immigration court to withdraw as
20 counsel, citing "mental health/memory issues" which caused communication challenges. Soraghan
21 Decl., ¶ 15. On February 2, 2026, Petitioner appeared with counsel for his final merits hearing.
22 Soraghan Decl., ¶ 15. The immigration judge granted counsel's motion to withdraw as counsel and
23 requested DHS gather and present Petitioner's medical records to the court for consideration.
24 Soraghan Decl., ¶ 15. The immigration judge continued Petitioner's case, setting it back to a master

1 calendar hearing currently scheduled for February 23, 2026, for the immigration judge's review of
2 the medical records and consideration of Petitioner's competency in removal proceedings.
3 Soraghan Decl., ¶ 15. On February 13, 2026, DHS filed the requested medical records with the
4 immigration court. Soraghan Decl., ¶ 16.

5 III. ARGUMENT

6 A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous
7 was not required prior to his arrest in October 2025. Dkt. 5, ¶ 41. "Due process is flexible and calls
8 for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424
9 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be affected
10 by the official action," (2) "the risk of an erroneous deprivation of such interest through the
11 procedures used, and probable value, if any, of additional or substitute procedural safeguards," and
12 (3) the Government's interest. *Id.*, at 334-35. As described below, the facts in this situation do not
13 support a blanket requirement of written notice and a hearing prior to Petitioner's detention.

14 As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests
15 implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-8674, 2021 WL
16 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that
17 noncitizens released from immigration detention have a protected liberty interest in remaining out
18 of custody, the weight of that liberty must be considered in the broader picture of the immigration
19 system, which has long acknowledged that a noncitizen has a lesser liberty interest than a citizen.
20 After all, "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the
21 Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules
22 as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53
23 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the
24 Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and

1 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”
2 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly
3 “recognized detention during deportation proceedings as a constitutionally valid aspect of the
4 deportation process.” *Demore*, 538 U.S. at 523. Thus, Federal Respondents acknowledge that
5 Petitioner had some liberty interest in his continued freedom from detention.

6 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
7 erroneous deprivation of Petitioner’s liberty did not necessitate a pre-deprivation hearing.
8 Nevertheless, there is no need for an evidentiary hearing to determine Petitioner’s status as an
9 applicant for admission – as that would not change from his initial entry and he does not claim to
10 have been admitted to the United States. A pre-deprivation hearing would be futile as his detention
11 is based on his mandatory detention. Furthermore, an analysis of Petitioner’s dangerousness or
12 flight risk is not relevant. Even if those factors were to be deemed relevant, Petitioner should not
13 be released because ICE had a basis to revoke Petitioner’s OREC based on his assault arrest.
14 Soraghan Decl., ¶ 9.

15 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
16 test and procedural safeguards “must account for the heightened government interest in the
17 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s
18 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has
19 a strong interest in preventing aliens from ‘remain[ing] in the United States in violation of our
20 law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially
21 true when it comes to determining whether removable aliens must be released on bond during the
22 pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise
23 has an interest in protecting immigration proceedings from unnecessary delay, especially
24

1 considering Congress's purpose for enacting Section 1225(b) and require parole for release for
2 arriving noncitizens.

3 Federal Respondents acknowledge that district courts have found that the revocation of an
4 order of release on recognizance pursuant to 8 C.F.R. § 1236.1(c)(8) requires a pre-deprivation
5 hearing to determine if that noncitizen is a flight risk or a danger to the community. *See, e.g.,*
6 *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d. 1316, 1324 (W.D. Wash. 2025). Here, Petitioner is subject
7 to mandatory detention as an applicant for admission. *Buenrostro-Mendez*, 2026 WL 323330, at
8 *5-6 (explaining that an "applicant for admission" is a person "seeking admission" regardless of
9 whether that person is actively engaged in admissions procedures when detained). Where detention
10 is mandatory, a pre-detention hearing would serve no purpose because release is not legally
11 available. *Calderon v. Noem*, No. 25-2136-LK-TLF, 2025 WL 3754042, at *8 (W.D. Wash. Dec.
12 29, 2025) ("The cases cited by Mr. Calderon are inapposite because none of them involved
13 mandatory detention (under the LRA or otherwise).") "Accordingly, a pre-detention hearing could
14 only have one outcome: detention." *Id.* Petitioner is lawfully detained, and this Court should deny
15 his request for release from immigration custody.

16 Petitioner has also noted that the Immigration Court identified him as a potential class
17 member in *Franco-Gonzalez v. Holder*, No. 10-2211, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014)
18 based on mental health concerns raised by his former immigration attorney. Dkt. 5, ¶ 36. While
19 the Immigration Court has requested Petitioner's medical records for review, the immigration
20 judge has not found Petitioner to be incompetent to proceed without representation or safeguards.
21 Soraghan Decl., ¶¶ 15-16. Until the immigration judge makes a competency determination, he is
22 not a class member. 2014 WL 5475097, at *7. Therefore, Petitioner's *potential* membership in the
23 *Franco-Gonzalez* class is of no consequence to this habeas petition.

1 IV. CONCLUSION

2 For the foregoing reasons, the Court should deny the petition.

3 DATED this 18th day of February, 2026.

4 Respectfully submitted,

5 s/ James C. Strong

6 JAMES C. STRONG, WSBA No. 59151

7 Assistant United States Attorney

8 United States Attorney's Office

9 Western District of Washington

10 700 Stewart Street, Suite 5220

11 Seattle, Washington 98101-1271

12 Phone: 206-553-7970

13 Fax: 206-553-4067

14 Email: james.strong@usdoj.gov

15 *Attorney for Federal Respondents*

16 *I certify that this memorandum contains 2,020*
17 *words in compliance with the Local Civil Rules.*