

District Judge Lauren King

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

FRANKLIN SANCHEZ HENAO,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,

Respondents.

Case No. 2:26-cv-00707-LK

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
March 23, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Franklin Alberto Sanchez Henao at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b).² In 2023, immigration officers encountered Petitioner shortly after he unlawfully entered the United States without inspection or parole. U.S. Department of Homeland Security ("DHS") determined that Petitioner was inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and commenced removal proceedings by issuing him a notice to appear. Due to a lack of bed space,

¹ Respondent Bruce Scott is not a Federal Respondent.

² Petitioner previously filed a habeas petition. *Sanchez Henao v. Wamsley*, No. 2:26-cv-00319-LK (W.D. Wash. Jan. 26, 2026). On February 23, 2026, that habeas petition was dismissed without prejudice on a stipulated motion. *Id.*, Dkt. 9.

1 Petitioner was released on an order of recognizance ("OREC"), which was conditioned on his
2 compliance with various supervision requirements. On January 23, 2026, ICE took Petitioner
3 into custody due to multiple release violations.

4 Petitioner incorrectly asserts that his re-detention without written notice and a pre-
5 detention hearing before a neutral decisionmaker violates due process. Pet., ¶¶ 32, 37. This
6 claim fails to look at this case independently as procedural due process is flexible and should be
7 individually suited to the circumstances at hand. Petitioner asks this Court to release him from
8 immigration detention. Granting such relief would require this Court to ignore Petitioner's
9 repeated violations of the conditions of his release. *Martinez Hernandez v. Andrews*, No. 1:25-
10 cv-01035, 2025 WL 2495767, at *12 (E.D. Cal. Aug. 28, 2025) (finding post-deprivation process
11 adequate due to release violations).

12 Petitioner further asks this Court to order his release and "permanently" enjoin his "re-
13 detention during the pendency of his removal proceeding absent written notice and a hearing
14 prior to re-detention where Respondents must prove by clear and convincing evidence that he is
15 a flight risk or danger to the community and that no alternatives to detention would mitigate
16 those risks." Pet., Prayer for Relief. But Petitioner fails to allege that re-detention is likely to
17 occur without proper notice and an opportunity to be heard. Even if he did, such an assertion
18 would be speculative at best. Accordingly, this Court should deny Petitioner's request for
19 permanent injunctive relief. *Torres v. Hermosillo*, No. 2:25-cv-02687-LK, 2026 WL 145715, at
20 *8 (W.D. Wash. Jan. 20, 2026).

21 II. BACKGROUND

22 A. Petitioner Franklin Alberto Sanchez Henao

23 On October 26, 2025, immigration officers apprehended Petitioner, a native and citizen
24 of Colombia, shortly after he entered the United States without inspection or parole at or near

1 Tecate, California. Steveson Decl., Ex. A, Form I-213; Ex. B, Warrant for Arrest. The
2 following day, DHS served Petitioner with a notice to appear charging him as inadmissible under
3 8 U.S.C. § 1182(a)(6)(A)(i). Steveson Decl., Ex. C, Notice to Appear. DHS released Petitioner
4 on an OREC due to lack of detention space. Declaration of Deportation Officer Benjamin
5 (“Benjamin Decl.”), ¶ 7; Steveson Decl., Ex. D, Notice of Custody Determination; Ex. E, OREC.

6 Petitioner asserts that he did “everything he was asked by the respondents in this case.”
7 Pet., ¶ 24. However, Petitioner was subject to reporting requirements, which he violated on four
8 occasions.³ Benjamin Decl., ¶ 8.

9 On January 23, 2026, ICE arrested Petitioner when he reported to the ICE office.
10 Benjamin Decl., ¶¶ 10-11; Steveson Decl., Ex. F, Form I-213; Ex. G, Warrant for Arrest. ICE
11 served him with OREC cancellation paperwork and an arrest warrant. Benjamin Decl., ¶ 10;
12 Steveson Decl., Ex. H (cancellation at bottom of form). In addition, Petitioner was informed that
13 he was being taken into custody because of multiple ATD violations. *Id.* Petitioner was then
14 transferred to the Northwest ICE Processing Center for detention. *Id.*

15 On February 27, 2026, Petitioner was ordered removed by an immigration judge.
16 Benjamin Decl., ¶ 12-13. Petitioner’s immigration case is pending on appeal. *Id.*

17 **B. Detention Authority**

18 Petitioner is an applicant for admission. U.S. Immigration and Customs Enforcement
19 (“ICE”) detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*,
20 No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026) (affirming the government’s
21 position that aliens who have not been admitted or are not entitled to be admitted to the United
22 States are “applicants for admission” who are subject to mandatory detention under Section
23 1225(b)(2)(A)). Congress established the expedited removal process in 8 U.S.C. § 1225 to

24 ³ Previously, ICE inadvertently overlooked one of the ATD violations when the database was reviewed.

1 ensure that the Executive could “expedite removal of aliens lacking a legal basis to remain in the
2 United States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v.*
3 *Thuraissigiam*, 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently
4 meritless claims and expeditiously removing the aliens making such claims from the country.”).

5 Section 1225 applies to “applicants for admission” to the United States, who are defined
6 as “alien[s] present in the United States who [have] not been admitted” or noncitizens “who
7 arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. §
8 1225(a)(1). As the Fifth Circuit recently found, aliens who are present without admission in the
9 United States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-*
10 *Mendez*, 2026 WL 323330, at *4. The court clarified that an “applicant for admission” is a
11 person “seeking admission” regardless of whether that person is actively engaged in admissions
12 procedures when detained. *Id.*, at 5-6. Applicants for admission “fall into one of two categories,
13 those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
14 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

15 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
16 “‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583
17 U.S. at 283. This parole terminates automatically at the expiration of the time for which parole
18 was authorized, or upon service of a charging document for either expedited removal
19 proceedings under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R.
20 §§ 212.5(e)(1); (2)(i). Upon termination of parole, the applicant reverts to the status that he or
21 she had at the time of parole. *See id.*

22 On July 8, 2025, DHS issued a memorandum to ICE employees explaining that DHS had
23 revisited its legal position on detention and release authorities. *Rodriguez v. Bostock*, 802 F.
24 Supp. 3d 1297, 1308 (W.D. Wash. 2025). The memorandum defined an “applicant for

1 admission” as “an alien present in the United States who has not been admitted or who arrives in
2 the United States, whether or not at a designated port of arrival.” *Id.* (citing 8 U.S.C.
3 § 1225(a)(1)). Prior to July 2025, DHS allowed discretionary releases of aliens that fit the
4 definition of an applicant for admission pursuant to 8 C.F.R. § 1236.1(c)(8), instead of only
5 utilizing parole, like what occurred here.

6 But the memorandum clarified, “Effective immediately, it is the position of DHS that
7 such aliens are subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE
8 custody except by [8 U.S.C. § 1182(d)(5)].” *Rodriguez*, 802 F. Supp. 3d at 1308. However,
9 DHS’s prior practice of OREC releases for applicants for admission does not mean that those
10 aliens are no longer applicants for admissions. *Buenrostro-Mendez v. Bondi*, No. 25-20496,
11 2026 WL 323330, at *8 (5th Cir. Feb. 6, 2026) (“While that is true, the government’s past
12 practice has little to do with the statute’s text. The text says what it says, regardless of the
13 decisions of prior Administrations. Years of consistent practice cannot vindicate an interpretation
14 that is inconsistent with a statute’s plain text.”).

15 Petitioner does not dispute that he is an applicant for admission. Instead, he challenges
16 his re-detention in January 2026 as violative of procedural due process. Pet., ¶¶ 32-44.
17 Petitioner asserts that DHS was required to provide him with written notice and a pre-detention
18 hearing before a neutral decisionmaker. *Id.*, ¶ 46. Although Federal Respondents acknowledge
19 that district courts have found that due process requires pre-detention hearings prior to re-
20 detention of aliens, as described below, due process did not require a pre-detention hearing here.
21 Accordingly, this Court should not grant Petitioner’s request for immediate release from
22 immigration detention.

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 Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous was not required prior to his arrest in January 2026. Pet., ¶¶ 46. “Due process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) “the private interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35. Due process does not mandate a pre-detention hearing here.

As to the first *Mathews* factor, Federal Respondents recognize the “weighty liberty interests implicated by the Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture

1 of the immigration system, which has long acknowledged that an alien has a lesser liberty
2 interest than a citizen. After all, “[t]he recognized liberty interests of U.S. citizens and aliens are
3 not coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that
4 Congress may make rules as to aliens that would be unacceptable if applied to citizens.’”
5 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538
6 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n the exercise of its broad
7 power over naturalization and immigration, Congress regularly makes rules that would be
8 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the
9 Supreme Court has repeatedly “recognized detention during deportation proceedings as a
10 constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523. Thus,
11 Federal Respondents acknowledge that Petitioner had some liberty interest in his continued
12 freedom from detention while on release. However, that liberty interest was conditional.

13 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
14 erroneous deprivation of Petitioner’s liberty did not necessitate a pre-deprivation hearing. The
15 Supreme Court has held that “the Constitution requires some kind of hearing *before* the State
16 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990)
17 (emphasis in the original). But in the same opinion, the Court also recognized that a pre-
18 deprivation hearing is not appropriate in every situation. *Id.*, at 128 (noting there may be
19 “special case[s]” where a pre-deprivation hearing is impracticable). Petitioner’s re-detention
20 qualifies as a special case due to his release violations.

21 In *Martinez Hernandez v. Andrews*, the district court found that allegations of release
22 violations that “are not obviously pretextual as in *E.A.T.-B*” provided at least an arguable basis
23 “that providing [the petitioner] with notice and a pre-deprivation hearing would have been

24 ⁴ *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

1 impracticable and/or would have motivated his flight.” *Martinez Hernandez*, 2025 WL 2495767,
2 at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous
3 deprivation could be reduced through a “prompt, post-deprivation process.” *Id.* (collecting
4 cases).

5 There is no need for an evidentiary hearing to determine Petitioner’s status as an
6 applicant for admission – as that would not change from his initial entry. To wit, a pre-
7 deprivation hearing would be futile as his detention is based on his mandatory detention. An
8 analysis of Petitioner’s dangerousness or flight risk is not relevant. Even if those factors were to
9 be deemed relevant, Petitioner should not be released here as ICE provided him with notice of
10 the reason for his detention and the opportunity to respond. Benjamin Decl., ¶ 11.

11 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
12 test and procedural safeguards “must account for the heightened government interest in the
13 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme
14 Court’s 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the
15 government clearly has a strong interest in preventing aliens from ‘remain[ing] in the United
16 States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at
17 518). “This is especially true when it comes to determining whether removable aliens must be
18 released on bond during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at
19 1208. The government likewise has an interest in protecting immigration proceedings from
20 unnecessary delay, especially considering Congress’s purpose for enacting Section 1225(b) and
21 require parole for release for arriving aliens.

22 Federal Respondents acknowledge that district courts have found that the revocation of
23 an order of release on recognizance pursuant to 8 C.F.R. § 1236.1(c)(8) requires a pre-
24 deprivation hearing to determine if that noncitizen is a flight risk or a danger to the community.

1 *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug.
2 19, 2025). Here, Petitioner is subject to mandatory detention as an applicant for admission.
3 Where detention is mandatory, a pre-detention hearing would serve no purpose because release is
4 not legally available

5 Accordingly, Petitioner is lawfully detained, and this Court should deny his request for
6 release from immigration custody.

7 **V. CONCLUSION**

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

9 DATED this 16th day of March, 2026.

10 Respectfully submitted,

11 *s/ Jordan C. Steveson*

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17 *I certify that this memorandum contains 2,323*
18 *words, in compliance with the Local Civil*
19 *Rules*