

District Judge James L. Robart

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

ROBERTO BONAT HERNANDEZ,

Petitioner,

v.

BRUCE SCOTT,¹ *et al.*,

Respondents.

Case No. 2:26-cv-00759-JLR

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
March 25, 2026.

I. INTRODUCTION

Petitioner Roberto Bonat Hernandez challenges his immigration detention as unlawful and unconstitutional. But his detention is expressly authorized by statute and consistent with controlling Supreme Court precedent. Because Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(1), and because his continued detention does not violate due process or any other provision of law, the Petition for Writ of Habeas Corpus should be denied.

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

II. DETENTION AUTHORITY

A. Section 1225(b) Detention

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

1 for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to
2 § 1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of
3 noncitizens as subject to expedited removal is subject to his or her "sole and unreviewable
4 discretion." 8 U.S.C. § 1225(b)(1)(A)(iii); *see also Am. Immigr. Laws. Ass'n v. Reno*, 199 F.3d
5 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

6 The Secretary (and earlier, the Attorney General) has designated categories of noncitizens
7 for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring
8 the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens*
9 *for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS "to place
10 in expedited removal, with limited exceptions, aliens determined to be inadmissible under
11 8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States
12 and who have not affirmatively shown, to the satisfaction of an immigration officer, that they
13 have been physically present in the United States continuously for the two-year period
14 immediately preceding the date of the determination of inadmissibility," who were not otherwise
15 covered by prior designations. *Id.* at 8139-40.

16 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
17 if a noncitizen indicates an intention to apply for asylum² or expresses a fear of persecution,
18 torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R.
19 § 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the
20 noncitizen is "removed from the United States without further hearing or review." 8 U.S.C.
21 §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f),
22

23 ²Noncitizens 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 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the
2 noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains
3 subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

4 Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal
5 under Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to
6 appear and conducted before an immigration judge, during which the noncitizen may apply for
7 relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,
8 statutorily defined circumstances – typically to individuals apprehended at or near the border who
9 lack valid entry documents or commit fraud upon entry – and allows for their removal without a
10 hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS
11 has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of*
12 *E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

13 **2. Section 1225(b)(2)**

14 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S.
15 at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under
16 Section 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to mandatory
17 detention pending full removal proceedings “if the examining immigration officer determines that
18 [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
19 § 1225(b)(2)(A); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir.
20 Feb. 6, 2026) (affirming the government’s position that aliens who have not been admitted or are
21 not entitled to be admitted to the United States are “applicants for admission” who are subject to
22 mandatory detention under Section 1225(b)(2)(A)); *but see Rodriguez Vazquez v. Bostock*, 802 F.
23 Supp. 3d 1297 (W.D. Wash. 2025) (finding that detention pursuant to 8 U.S.C. § 1225(b)(2) of
24 the Bond Denial Class is unlawful).

1 As the Fifth Circuit recently found, aliens who are present without admission in the United
2 States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-Mendez*,
3 2026 WL 323330, at *4. The court clarified that an “applicant for admission” is a person “seeking
4 admission” regardless of whether that person is actively engaged in admissions procedures when
5 detained. *Id.* at 5-6.

6 **B. Discretionary Release**

7 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
8 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*,
9 583 U.S. at 283. Parole automatically terminates if the noncitizen departs from the United States
10 or “at the expiration of the time for which parole was authorized,” and “no written notice shall be
11 required” for automatic termination. 8 C.F.R. § 212.5(e)(1). In all other cases, parole is terminated
12 when the purpose for which parole was authorized has been accomplished or an authorized DHS
13 official decides that “neither humanitarian reasons nor public benefit warrants the continued
14 presence of the alien in the United States.” 8 C.F.R. § 212.5(e)(2)(i); *see also* 8 U.S.C.
15 § 1182(d)(5)(A) (“[W]hen the purposes of such parole shall, in the opinion of the Secretary of
16 Homeland Security, have been served the alien shall forthwith return or be returned to the custody
17 from which he was paroled[.]”). In these circumstances, written notice of the termination is
18 required. When a charging document is served on the alien, the charging document serves as the
19 notice of termination of parole. 8 C.F.R. § 212.5(e)(2)(i). Upon termination of parole, the
20 applicant reverts to the status that he or she had at the time of parole. 8 C.F.R. § 212.5(e).

21 **III. FACTUAL BACKGROUND**

22 Petitioner is a native and citizen of Cuba. Declaration of Deportation Office Enrique
23 Rodriguez (“Rodriguez Decl.”) ¶ 3. On October 9, 2023, Petitioner was paroled into the United
24 States at Miami, Florida, on Cuban Humanitarian Parol under 8 USC § 1182(d)(5)(A). *Id.* ¶ 4.

1 The parole expired on June 12, 2025. *Id.* On December 17, 2025, Enforcement and Removal
2 Operations (“ERO”) conducted field operations in Beaverton, Oregon. *Id.* ¶ 5. Pursuant to an I-
3 200, Warrant for Arrest of an Alien, ICE detained Petitioner on that date. *Id.*; Declaration of
4 Alixandria K. Morris (“Morris Decl.”), Ex. 3.

5 On December 17, 2025, Petitioner was personally served with a Notice to Appear
6 (“NTA”) charging him as an arriving alien under 8 USC § 1182(a)(7)(A)(i)(I), and the NTA was
7 filed with the immigration court that same day. *Id.* ¶ 6; Morris Decl., Exs. 1-2 (NTA; I-213).
8 Accordingly, Petitioner is detained under 8 USC § 1225(b)(1). Rodriguez Decl. ¶ 7; Morris Decl.,
9 Ex. 1 (identifying Petitioner as an arriving alien in 2022); *see also Thuraissigiam*, 591 U.S. at
10 108-09.

11 Petitioner has been detained at the Northwest ICE Processing Center (“NWIPC”) since
12 December 17, 2025. Rodriguez Decl. ¶ 8. Petitioner filed two Motions to Terminate removal
13 proceedings based on his intention to file for adjustment of status under the Cuban Adjustment
14 Act. *Id.* ¶ 9. The first was filed on December 31, 2025, and denied by the Immigration Judge
15 (“IJ”) on January 8, 2026. *Id.* The second was filed on January 15, 2026, and denied on
16 January 20, 2026. *Id.* Petitioner filed a bond redetermination request with the IJ on February 26,
17 2026. *Id.* ¶ 10. However, according to the IJ’s March 2, 2026 custody redetermination order, the
18 request was withdrawn. *Id.*

19 Petitioner is scheduled for a Master Calendar Hearing on March 31, 2026. *Id.* ¶ 11. On
20 December 23, 2025, ERO sent an email to the International Operations Division (IOD)-Cuba to
21 inquire whether Cuba would accept or deny repatriation of Petitioner. *Id.* ¶ 12. On March 3, 2026,
22 the Detention and Deportation Officer notified ERO that the Cuban government agreed to accept
23 Petitioner should he be deemed removable. *Id.* ¶ 13.

IV. 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. 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.” *Thuraissigiam*, 591 U.S. at 125 n.20. 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).

V. ARGUMENT

Although the instant habeas petition appears to assert ten or more claims, many of which are overlapping, interrelated, and not clearly delineated, the Federal Respondents construe the petition as presenting five claims: (1) a challenge to the authority for detention; (2) a claim of unconstitutional prolonged detention without a court-ordered bond hearing; (3) a due process challenge to re-detention, including the application of the *Mathews* balancing factors; (4) a claim arising under the Administrative Procedure Act; and (5) alleged violations of the Fourth Amendment. *See* Petition (“Pet.”), pgs. 7-26 (ten legal framework grounds), pgs. 26-28 (claims for relief).

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(1)

Respectfully, Petitioner’s contention that the legal basis for his immigration detention somehow shifted upon his release on humanitarian parole is incorrect and directly contradicted by clear, controlling case law. Pet. ¶¶ 98-102. Petitioner urges this Court to controvert a

1 consistently construed statutory scheme, notwithstanding decades of settled Supreme Court
2 precedent to the contrary.

3 Petitioner is an “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b).
4 *See Thuraissigiam*, 591 U.S. at 109 n.2; 8 C.F.R. § 1.2. As relevant here, § 1225(b)(1) applies to
5 “arriving aliens” and certain other noncitizens who are initially determined to be inadmissible due
6 to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii).

7 The record establishes that Petitioner is clearly an arriving alien. Morris Decl., Ex. 1, pg. 1
8 (checking the box “arriving alien” in 2022) (NTA). Petitioner falls squarely within that
9 framework. Petitioner’s subsequent release on humanitarian parole in 2022 pursuant to 8 U.S.C.
10 § 1182(d)(5)(A) does not alter the statutory basis governing detention. As set forth above, the
11 controlling inquiry is the manner of entry and initial classification, not a later discretionary release
12 decision. *See supra* § II.B. Accordingly, Petitioner remains subject to detention under § 1225(b),
13 and is not entitled to a bond hearing under § 1226(a).

14 This habeas petition does not implicate the matters addressed in *Matter of Yajure Hurtado*,
15 29 I. & N. Dec. 216 (BIA 2025) or *Rodriguez Vazquez*, as Petitioner seemingly asserts. Pet. ¶¶ 85-
16 92, 98-102. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1), not § 1225(b)(2). As
17 explained in *Vazquez v. Bostock*, 802 F. Supp. 3d 1297 (W.D. Wash. 2025), the Bond Denial
18 Class consists of individuals who contend they are unlawfully detained under § 1225(b)(2)—
19 which mandates detention for certain noncitizens—and who assert that they should instead be
20 eligible for release on bond under the discretionary detention scheme set forth in § 1226(a).
21 Because Petitioner’s detention arises under § 1225(b)(1), those class-based claims and
22 considerations are inapplicable here.

23 For these reasons, the Court should deny Petitioner’s request for release from immigration
24 detention. In the alternative, if the Court determines that a bond hearing is warranted, the

1 appropriate remedy to order the immigration court to hold a bond hearing under 8 U.S.C.
2 § 1226(a), rather than an order from this Court directing Petitioner's release.

3
4 **B. Petitioner's continued detention without a court-ordered bond hearing is constitutional**

5 Petitioner has not shown that he is in immigration custody in violation of the Constitution,
6 law, or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detains him pursuant to
7 8 U.S.C. § 1225(b)(1) for the reasons stated above, which mandates detention of arriving aliens.
8 Individuals detained under Section 1225(b), including Petitioner, are not entitled to an
9 individualized bond hearing simply due to the passage of time.

10 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
11 the length of detention and whether such aliens detained under this statutory authority have a
12 statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Court rejected both
13 arguments, holding that Section 1225(b) mandates detention during the pendency of removal
14 proceedings and provides no entitlement to a bond hearing. *See id.* at 303 ("Nothing in the
15 statutory text imposes any limit on the length of detention."). While *Jennings* forecloses any
16 statutory or categorical constitutional right to a bond hearing under Section 1225(b), it did not
17 reach the issue of whether prolonged detention without such a hearing could, in individual cases,
18 raise a due process concern.

19 Petitioner's continued detention without a court-ordered bond hearing does not violate his
20 Fifth Amendment due process rights. Courts in this District analyze this issue using a multi-factor
21 test, established by this Court. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D.
22 Wash. 2019). In *Banda*, this Court found that the petitioner's 17-month immigration detention
23 pursuant to 8 U.S.C. § 1225(b) had become unreasonable. *Id.* at 1117-121. To conduct this
24 analysis, this Court analyzed six factors: (1) length of detention; (2) how long detention is likely

1 to continue absent judicial intervention; (3) conditions of detention; (4) the nature and extent of
2 any delays in the removal caused by the petitioner; (5) the nature and extent of any delays caused
3 by the government; and (6) the likelihood that the final proceedings will culminate in a final order
4 of removal. *See id.* Analysis of these factors demonstrates that Petitioner's detention is not yet
5 prolonged, and thus has not become unreasonable.

6 The first *Banda* factor looks at the length of the petitioner's immigration detention.
7 Petitioner has been detained since December 17, 2025. Federal Respondents note that the current
8 length of his detention has not reached what most courts consider the beginning of prolonged
9 detention (six months) nor the length of what many courts have found to be unreasonable
10 (Petitioner will have been in detention for six months on June 17, 2026). *See Hong v. Mayorkas*,
11 No. 2:20-cv-1784, 2021 WL 8016749, at *5 (W.D. Wash. June 8, 2021), *report and*
12 *recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022) (collecting cases
13 finding prolonged detention from 13 months to 32 months without a court-ordered bond hearing
14 to have become unreasonable). Therefore, at worst, this factor should favor Federal Respondents.

15 The second *Banda* factor assesses the length of future detention. Petitioner is awaiting
16 determination on his motion to terminate removal proceedings. Rodriguez Decl. ¶ 9. Any estimate
17 of future pre-order detention would be speculative, at best. Thus, this Court should find this factor
18 to be neutral.

19 As for the third *Banda* factor – conditions of detention, Petitioner is detained at the
20 NWIPC.

21 The fourth *Banda* factor assesses delays caused by the petitioner. Because there is no
22 evidence that Petitioner has intentionally caused any delay, this factor likely favors Petitioner.
23 Likewise, because the government has not intentionally caused any delay, the fifth *Banda* factor
24 favors Federal Respondents.

1 The last *Banda* factor weighs the likelihood that removal proceedings will result in a final
2 order of removal. It is unknown whether Petitioner's motion will be granted or denied. As
3 speculation would be necessary to evaluate this factor, this factor should be deemed neutral at this
4 time.

5 In total, the *Banda* factor analysis demonstrates that most factors are neutral. Without a
6 clear showing that her ongoing detention without a court-ordered bond hearing violates due
7 process, this Court should deny Petitioner's request for a bond hearing.

8 **C. Revocation of Petitioner's Conditional Parole comports with due process**

9 Petitioner incorrectly argues that he was entitled to additional process before he was taken
10 back into ICE custody. As an initial matter, ICE has a legitimate, non-punitive interest in
11 Petitioner's detention. A pre-deprivation hearing to determine whether Petitioner is a flight risk or
12 danger to the community is not required. There is no statutory or regulatory requirement for a
13 hearing before an individual in removal proceedings is redetained, and the Supreme Court has
14 warned courts against reading additional procedural requirements into the Immigration and
15 Nationality Act. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a
16 specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are
17 generally not free to impose [additional procedural rights] if the agencies have not chosen to grant
18 them") (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*,
19 435 U.S. 519, 524 (1978) (cleaned up)).

20 Furthermore, DHS is not restricted from rearresting noncitizens absent a change in
21 circumstance. The Board of Immigration Appeals ("BIA") has recognize[d] counsel's argument"
22 in this regard; but the BIA did not hold that such changed circumstances were a requirement for
23 rearrest. *In re Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981); *see also Saravia v. Sessions*,
24 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) ("[T]he district court never held that *Sugay* requires

1 these hearings.”). Other courts have recognized that *Sugay*’s dicta is not “binding on ICE.”
2 *Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19 (S.D.N.Y. Dec. 27,
3 2018).

4 Federal Respondents acknowledge that district courts have recently decided that the
5 revocation of parole requires a pre-detention hearing to determine if that noncitizen is a flight risk
6 or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
7 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate
8 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
9 Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)). Both
10 Sections provide that the decisions to release or revoke are discretionary. But Section 1231(c)(8)
11 includes language requiring the officer to decide that the alien “would not pose a danger to
12 property or persons, and that the alien is likely to appear for any future proceeding.” In contrast,
13 Section 1231(c)(9) does not require such a determination and specifically provides that “release
14 may be revoked at any time.” Moreover, the risk of possible erroneous deprivation is low where,
15 as here, the parole he was given had expired after explicitly agreeing to the defined term of release.
16 Rodriguez Decl. ¶¶ 4-5.

17 Petitioners’ re-detention also comports with procedural due process. “Due process is
18 flexible and calls for such procedural protections as the particular situation demands.” *Mathews*
19 *v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner’s detention
20 is consistent with his due process rights. Under *Mathews*, “[t]he fundamental requirement of due
21 process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at
22 333 (internal quotation marks omitted). This calls for an analysis of (1) “the private interest that
23 will be affected by the official action,” (2) “the risk of an erroneous deprivation of such interest
24

1 through the procedures used, and probable value, if any, of additional or substitute procedural
2 safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

3 Federal Respondents recognize the “weighty liberty interests implicated by the
4 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
5 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
6 from immigration detention have a protected liberty interest in remaining out of custody, the
7 weight of that liberty must be considered in the broader picture of the immigration system, which
8 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
9 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
10 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that
11 would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
12 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has
13 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
14 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*,
15 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention
16 during deportation proceedings as a constitutionally valid aspect of the deportation process.”
17 *Demore*, 538 U.S. at 523. While Petitioner has some liberty interest in his continued freedom
18 from detention after being released from custody, that interest is tempered by the express
19 understanding that he was being released for a defined period of time. *Rodriguez Decl.* ¶¶ 4-5.
20 Thus, Petitioner’s agreement to the defined term was akin to as if he had voluntarily chosen to be
21 detained as of the date of the expiration of his parole, and he had no remaining liberty interest
22 implicated in his re-detention six months after the expiration of parole. *But see Ramirez Tesara*
23 *v. Wamsley*, 800 F. Supp. 3d 1130, 1133 (W.D. Wash. 2025).

1 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
2 of Petitioners' liberty without a pre-deprivation hearing here is minimal. The Petitioner had notice
3 that he could be re-detained upon the expiration of his parole when he agreed to the program. His
4 re-detention is the result of the expiration of the express term to which he agreed and upon which
5 his conditional parole was based.

6 As for the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test
7 "must account for the heightened government interest in the immigration detention context."
8 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth
9 Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in
10 preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*,
11 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to
12 determining whether removable aliens must be released on bond during the pendency of removal
13 proceedings." *Rodriguez Diaz*, 53 F.4th at 1208. The government also has a legitimate interest in
14 enforcing the specific terms and conditions governing the release of individuals from custody—
15 here, where Petitioner was released for a defined period of time, agreed to parole on the express
16 condition that the release would expire, and was aware of that expiration, the government retains
17 a legitimate interest in re-detaining Petitioner upon the conclusion of that term.

18 In short, the three *Mathews* factors demonstrate that Petitioners' detention comports with
19 procedural due process.

20 **D. Petitioner errs in asserting Fourth Amendment concerns in this context**

21 Petitioner's claims concerning his arrest by immigration officers as violative of the Fourth
22 Amendment are not cognizable in this habeas action. *Marroquin Salazar v. Noem*, No. 5:25-cv-
23 02367, 2025 WL 3535050, at *1 (C.D. Cal. Dec. 8, 2025) (adopting and quoting the Report &
24 Recommendation). Petitioner seemingly asserts that his arrest violated the Fourth and Fifth

1 Amendments because he was allegedly seized without probable cause. Pet. ¶¶ 23, 32, 40, 52-56,
2 94-97. Petitioner seeks his release from immigration custody. Pet. ¶ 97, Prayer for Relief. But
3 even if he could establish any of his claims – which Federal Respondents do not concede, they
4 should not be brought via habeas and release would not be an appropriate form of relief.

5 Since removal proceedings are underway, Petitioner’s current custody flows not from his
6 arrest and initial post-arrest detention, but from the authority of the Immigration and Nationality
7 Act (“INA”). *See, e.g.*, 8 U.S.C. § 1225(b)(2). The legality of Petitioner’s arrest is not presently
8 relevant and thus cannot be the basis for habeas relief. The habeas statute allows a petitioner who
9 is “in custody” to challenge that custody on various grounds, 28 U.S.C. § 2241(c), including that
10 “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.”
11 28 U.S.C. § 2241(c)(3). The statute is written in the present tense, making clear that Section 2241
12 only allows a petitioner to challenge his current custody, not his past custody. *See Preiser v.*
13 *Rodriguez*, 411 U.S. 475, 484 (1973) (“the essence of habeas corpus is an attack by a person *in*
14 *custody* upon the legality of *that custody*” (emphasis added)).

15 While Petitioner is free to challenge his current custody based on that statutory authority,
16 any habeas claim basis on his arrest is now moot, since the arrest is not the source of his present
17 custody. *See Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990) (habeas petition challenging
18 pretrial detention was moot once petitioner was incarcerated pursuant to a judgment of
19 conviction); *James v. Reese*, 546 F.2d 325, 328 (9th Cir. 1976) (same).

20 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
21 and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed
22 from the United States. “[D]etention necessarily serves the purpose of preventing deportable []
23 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that
24 if ordered removed, the aliens will be successfully removed.” *Demore*, 538 U.S. at 528. The

1 Supreme Court has long held that deportation proceedings “would be in vain if those accused
 2 could not be held in custody pending the inquiry” of their immigration status. *Wong Wing v.*
 3 *United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be
 4 detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299
 5 (interpreting the “plain meaning” of sections 1225(b)(1) and (2) to mean that applicants for
 6 admission be mandatorily detained for the duration of their immigration proceedings).

7 Furthermore, this Court does not have jurisdiction to hear Petitioner’s claims that should
 8 be raised in his immigration proceedings. In 8 U.S.C. §1252(b), Congress “consolidated judicial
 9 review of immigration proceedings into one action in the court of appeals.” *Guerrero-Lasprilla*
 10 *v. Barr*, 589 U.S. 221, 233 (2020) (quotation marks and citation omitted). This provision is known
 11 as the “zipper clause” because it “consolidates or ‘zips’ ‘judicial review’ of immigration
 12 proceedings into one action in the court of appeals.” *Singh v. Gonzales*, 499 F.3d 969, 976 (9th
 13 Cir. 2007) (citation omitted). This statute provides:

14 Judicial review of all questions of law and fact, including interpretation and
 15 application of constitutional and statutory provisions, arising from any action
 16 taken or proceeding brought to remove an alien from the United States under
 17 this subchapter shall be available only in judicial review of a final order under
 18 this section. *Except as otherwise provided in this section, no court shall have*
jurisdiction, by habeas corpus under section 2241 of Title 28 or any other
habeas corpus provision, by section 1361 or 1651 of such title, or by any other
provision of law (statutory or nonstatutory), to review such an order or such
questions of law or fact.

19 8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“a petition for review .
 20 . . shall be the sole and exclusive means for judicial review of an order of removal”). “Taken
 21 together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising
 22 from any removal-related activity can be reviewed only through the [petition for review] process.”
 23 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).

1 While claims “collateral to, or independent of” the removal process are still subject to
2 habeas review, “[w]hen a claim by an alien, however it is framed, challenges the procedure and
3 substance of an agency determination that is ‘inextricably linked’ to the order of removal, it is
4 prohibited by section 1252(a)(5).” *Id.* Here, Petitioner’s claims are inextricably linked to
5 “questions of law and fact, including interpretation and application of constitutional and statutory
6 provisions, arising from any action taken or proceeding brought to remove an alien.” 8 U.S.C.
7 § 1252(b)(9).

8 Finally, the remedy for an unlawful arrest is the suppression of evidence obtained
9 therefrom, not release from custody. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984);
10 *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935
11 (2006); *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1033-34 (9th Cir. 2011)
12 (exclusionary rule applies in civil removal proceedings only when the Fourth Amendment
13 violation is egregious). “The ‘body’ or identity of a defendant or respondent in a criminal or civil
14 proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that
15 an unlawful arrest, search, or interrogation occurred.” *Lopez-Mendoza*, 468 U.S. at 1039; *see also*
16 *Stone v. Powell*, 428 U.S. 465, 485 (1976) (noting that “judicial proceedings need not abate when
17 the defendant’s person is unconstitutionally seized” (*citing Gerstein v. Pugh*, 420 U.S. 103, 119
18 (1975); *Frisbie v. Collins*, 342 U.S. 519 (1952))); *Garcia-Beltran*, 443 F.3d at 1132 (“[T]here is
19 no sanction to be applied when an illegal arrest only leads to discovery of the man’s identity.”
20 (quotation omitted)).

21 Accordingly, the extent that Petitioner seeks his release from custody based on the
22 allegedly unlawful arrest, there is no basis for the Court to grant such relief. *See, e.g., Rodrigues*
23 *De Oliveira v. Joyce*, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (“Petitioner’s argument that
24 an illegal arrest automatically results in an illegal detention is misguided. . . . [E]ven if Petitioner’s

1 initial arrest was unlawful, her detention pending removal may stand.”); *Alonso-Portillo v. Bondi*,
2 2025 WL 2483393, at *11 (S.D. Ohio Aug. 28, 2025) (“Traditional application of the
3 exclusionary rule results in the suppression of evidence, as ‘fruits of the poisonous tree,’ obtained
4 in violation of the Fourth Amendment. But the rule does not, as Alonso-Portillo asserts here,
5 dictate his immediate release from detention.”); *Marvan v. Slaughter*, 2025 WL 1940043, at *3-
6 4 (D. Mont. July 15, 2025) (petitioner could not obtain habeas relief on Fourth Amendment
7 violation where administrative removal proceedings had commenced); *H.N. v. Warden, Stewart*
8 *Det. Ctr.*, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (“even if the Court accepted
9 Petitioner’s argument that his initial detention was somehow unlawful, he is still not entitled to
10 habeas relief.”); *Medina v. U.S. Dep’t of Homeland Sec.*, 2017 WL 1101370, at *1-2 (W.D. Wash.
11 Mar. 24, 2017) (immigration detainee was not entitled to habeas relief because “the remedy for
12 an unlawful arrest in violation of the Fourth Amendment is suppression of evidence,” so if he
13 “desire[d] release from his current detention, his avenue for seeking such release should occur in
14 the context of his removal proceedings” (citations omitted)); *Amezcu-Gonzalez v. Lobato*,
15 2016 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016) (dismissing petition challenging immigration
16 detainee’s arrest on Fourth Amendment grounds where detainee did not dispute that he was
17 subject to final order of removal, and his “only assertion [was] that he should be released because
18 his arrest violated the Fourth Amendment”; “even if petitioner’s arrest amounts to an egregious
19 Fourth Amendment violation, he is not entitled to habeas relief”), *report and recommendation*
20 *adopted*, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016); *Nyuwa v. Gurule*, 2014 WL 12984435,
21 at *1 (D. Ariz. June 13, 2014) (“It is doubtful that Petitioner’s arrest was unlawful. But even if it
22 was, his allegedly unlawful arrest does not invalidate his current immigration detention because
23 ‘the “body” or identity of a defendant in a criminal or civil proceeding is never itself suppressible
24

1 as the fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or
 2 interrogation occurred.” (*quoting Lopez-Mendoza*, 468 U.S. at 1039)).

3
 4 **E. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of
 Subject Matter Jurisdiction.**

5 Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A),
 6 (B) and (C) of the Administrative Procedure Act (“APA”). Pet. ¶¶ 103-106. The Court has no
 7 subject matter jurisdiction to hear these claims.

8 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
 9 § 704 (“Agency action made reviewable by statute and final agency action *for which there is no*
 10 *other adequate remedy in a court* are subject to judicial review.”) (emphasis added). Simply put,
 11 “federal courts lack jurisdiction over APA challenges whenever Congress has provided another
 12 ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

13 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
 14 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
 15 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’
 16 claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the
 17 “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their
 18 confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the
 19 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
 20 which states that claims under the APA are not available when there is another ‘adequate remedy
 21 in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.”
 22 *Id.* at 674; *cf. O’Banion v. Matevousian*, 835 Fed. App’x 347, 350 (10th Cir. 2020) (holding that
 23 “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); *and*
 24 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)

1 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
2 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

3 Moreover, to be reviewable under the APA an action must be a “final agency action,”
4 which is to say that it is the “consummation of the agency's decisionmaking process.” *See Bennett*
5 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a
6 removal order is not within that category because it is only an intermediary step in the process.
7 *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly,
8 Petitioner’s claims based on alleged APA should be denied.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
11 the Petition.

12 DATED this 20th day of March, 2026.

13 Respectfully submitted,

14 s/ Alixandria K. Morris

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I certify that this memorandum contains 6,007 words, in compliance with the Local Civil Rules.