

Honorable Judge James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Roberto BONAT HERNANDEZ,

Plaintiff,

v.

BRUCE SCOTT, Warden, Northwest
Immigration and Customs Enforcement
Processing Center;

PAMELA BONDI, Attorney General of
the United States;

TODD LYONS, Acting Director of
Immigration and Customs Enforcement;

CHARLES NEIL FLOYD, US Attorney
for Western District of Washington
Department of Justice; and

EOIR Tacoma Immigration Court

Respondents.

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

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS**

Noted for Consideration:
March 25, 2026

PET'R'S TRAVERSE IN SUPPORT OF
PET. FOR WRIT OF HABEAS CORPUS
Case No. 2:26-cv-00759-JLR

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INTRODUCTION

Federal Respondents fail to justify the lawfulness of Roberto Bonat Hernandez's detention. Their Return Memorandum rests on a single overarching premise: that a Cuban national who was lawfully paroled through a port of entry, released into the interior, authorized to work, and permitted to pursue permanent residence for more than two years, is for purposes of detention indistinguishable from an alien apprehended at the border the moment he steps off a plane. That premise is legally untenable, structurally inconsistent with the Immigration and Nationality Act (INA), and constitutionally infirm.

Respondents' reliance on 8 U.S.C. § 1225(b)(1) is misplaced. That provision governs inspection and detention during the admissions process — not the re-detention of individuals who have already been inspected, released into the interior, and permitted to live and work in the United States for years. Respondents' argument would grant the Executive Branch boundless authority to classify any parolee as an "arriving alien" subject to mandatory detention at any time, in any location, without a warrant, without probable cause, and without any individualized determination. Congress did not authorize that. The doctrine of constitutional avoidance compels a narrower reading.

Respondents' *Banda* analysis is likewise flawed. They attempt to minimize Petitioner's detention by arguing it has "not yet" become prolonged — while simultaneously conceding that several factors are neutral and that future detention is of indeterminate length. Their *Mathews* balancing on the parole revocation question ignores controlling district court authority and fundamentally mischaracterizes Petitioner's liberty interest by asserting he "voluntarily chose" to be detained when his parole expired. That argument has no support in law.

Petitioner respectfully requests that this Court grant the writ and order his immediate

1 release, or in the alternative, order an immediate individualized bond hearing before an
 2 Immigration Judge at which the government bears the burden of proof by clear and convincing
 3 evidence.

4 ARGUMENT

5 **I. RESPONDENTS' RELIANCE ON 8 U.S.C. § 1225(b)(1) IS LEGALLY UNTENABLE 6 AS APPLIED TO A LONG-RELEASED PAROLEE SEIZED IN THE INTERIOR.**

7 **A. The Statutory Scheme Forecloses Application of § 1225(b)(1) to Interior Re- 8 Detentions.**

9 Respondents contend that Petitioner is an "arriving alien" subject to mandatory detention
 10 under 8 U.S.C. § 1225(b)(1) based on the fact that he was paroled and never formally "admitted"
 11 to the United States. Dkt. # 10 at pp. 7-8. But that argument conflates two analytically distinct
 12 questions: (1) whether Petitioner is removable as an applicant for admission under the INA's
 13 grounds of inadmissibility, and (2) whether § 1225(b)(1) authorizes mandatory detention without
 14 individualized review for a person who was inspected years ago, released into the interior, and
 15 arrested far from any port of entry or border area. The answer to the second question is no.

16 Section 1225 governs the inspection of "applicants for admission" — that is, noncitizens
 17 "arriving in the United States" or those present without admission. 8 U.S.C. § 1225(a)(1). The
 18 statute operates at the moment of inspection: it directs immigration officers to examine arriving
 19 aliens, determine admissibility, and, where applicable, place them in expedited removal. See 8
 20 U.S.C. §§ 1225(a)–(b). Petitioner was inspected at Miami International Airport on October 9,
 21 2023. Dkt. # 1-2 at p. 5. He was paroled into the United States pursuant to 8 U.S.C. §
 22 1182(d)(5)(A). *Id.* at p. 12. He was then released into the interior of the country, where he lived
 23 and worked for more than two years. Dkt. # 1 at p. 6.

1 The detention authority Congress created in § 1225(b)(1) speaks to that inspection
2 moment. Nothing in the statutory text authorizes re-triggering mandatory § 1225(b)(1) detention
3 years later, in the interior, upon re-arrest. When Congress intended detention authority to extend
4 to individuals already present in the interior, it enacted a separate statute — 8 U.S.C. § 1226 —
5 with different procedures, including discretionary release on bond. See 8 U.S.C. § 1226(a).
6 Reading § 1225(b)(1) to supplant § 1226 for long-released parolees would render § 1226
7 superfluous as applied to that entire category of noncitizens. Courts must avoid statutory
8 constructions that render neighboring provisions meaningless. *Corley v. United States*, 556 U.S.
9 303, 314 (2009).

10 Respondents cite *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and *Dep't of Homeland*
11 *Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), for the broad proposition that § 1225(b) mandates
12 detention without bond hearings. Dkt. # 10 at pp. 8-9. But neither case addressed the scope of §
13 1225(b) as applied to interior re-detention of long-released parolees. *Jennings* addressed whether
14 § 1225(b) implied a statutory right to periodic bond hearings — it did not. 583 U.S. at 303.
15 *Thuraissigiam* concerned a recent border entrant apprehended near the boundary and addressed
16 the historical limits of habeas review in that narrow context. 591 U.S. at 111–12. Petitioner's
17 circumstances are categorically different. He entered through a designated port of entry, was
18 granted parole by the government, and was arrested driving to work in Beaverton, Oregon — not
19 within 100 miles of a border. Dkt. # 1 at p. 6.

20 **B. Constitutional Avoidance Requires a Narrower Construction.**

21 Even if § 1225(b)(1)'s text were ambiguous, the doctrine of constitutional avoidance
22 would compel the narrower reading Petitioner advances. The Supreme Court reaffirmed in
23 *Jennings* itself that constitutional avoidance is a "background interpretive canon" courts apply

1 when a statute's language is susceptible to multiple plausible readings. 583 U.S. at 286. Where
2 one reading raises serious constitutional questions and another does not, courts must adopt the
3 narrower reading. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

4 The Government's expansive reading of § 1225(b)(1) raises grave concerns under both
5 the Fourth and Fifth Amendments. Under that reading, any noncitizen who entered on parole —
6 regardless of how long ago, how deeply integrated, or what reliance interests have attached —
7 may be seized in the interior without a warrant, without probable cause, and detained without
8 any individualized hearing, indefinitely, simply because they were never formally "admitted."
9 That construction would enable arbitrary executive detention untethered from contemporaneous
10 inspection. The Constitution does not permit it.

11 The narrower construction — that § 1225(b)(1) governs detention during and
12 immediately following the inspection process, while § 1226 governs interior arrests of
13 noncitizens already released and present in the country — is fully consistent with the statutory
14 text and preserves the constitutional validity of both provisions. This Court should adopt that
15 reading.

16 **C. Respondents' Own Characterization of the Factual Record Confirms §**
17 **1225(b)(1) Is Inapplicable.**

18 Respondents acknowledge that Petitioner was paroled into the United States in October
19 2023, resided in the country, obtained employment authorization, and pursued adjustment of
20 status under the Cuban Adjustment Act (CAA). Dkt. # 10 at pp. 5-6. They acknowledge his
21 parole was not terminated until December 17, 2025 — the date of his arrest — and that no pre-
22 deprivation hearing was conducted. *Id.* These facts confirm that Petitioner was not an alien
23 "arriving" at the border when he was detained. He was a long-present parolee, arrested in the
24 interior of the United States. Section 1226, not § 1225(b)(1), governs his detention.

II. THE BANDA FACTOR ANALYSIS DOES NOT SUPPORT RESPONDENTS' POSITION, AND PETITIONER'S DETENTION IS ALREADY UNREASONABLE.

Respondents argue that Petitioner's roughly three-month detention has not yet become "prolonged" and that the *Banda* factors, on balance, favor the government. Dkt. # 10 at pp. 9-11. That analysis is superficial and incomplete.

As to the first *Banda* factor — length of detention — Respondents claim this factor favors them because Petitioner has not yet been detained for six months. Dkt. # 10 at p. 10. But they ignore the trajectory: Petitioner's detention began December 17, 2025. His Master Calendar Hearing is not until March 31, 2026, with no merits hearing scheduled. Removal proceedings are in their earliest stages. By any realistic assessment, Petitioner will be detained well beyond six months, and likely far longer. Courts in this District have ordered bond hearings at detention lengths far shorter than what Petitioner faces when future detention is projected to be significant. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117–21 (W.D. Wash. 2019) (finding 17-month detention unreasonable); *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *5 (W.D. Wash. June 8, 2021) (collecting cases).

As to the second *Banda* factor — likely duration of future detention — Respondents concede this is speculative and suggest the Court treat it as neutral. Dkt. # 10 at p. 10. But neutrality here benefits Petitioner, not the government. The burden of demonstrating that detention is reasonable falls on the government. Where future detention cannot be estimated, and the government offers no basis to predict imminent resolution, indefinite continued detention is unreasonable.

Respondents concede the fourth *Banda* factor — intentional delays by Petitioner — favors Petitioner. *Id.* Petitioner has filed motions to terminate based on his pending CAA

1 application, which is a legitimate, congressionally authorized avenue for relief. Pursuing legal
2 remedies cannot count against him. The government offers no evidence Petitioner has
3 manufactured delay.

4 On the sixth *Banda* factor — likelihood of a final removal order — Respondents again urge
5 neutrality. Dkt. # 10 at p. 11. But this understates a critical fact: Petitioner has a pending I-485
6 application under the CAA. He entered lawfully on parole and has been continuously present for
7 more than two years. Cuban nationals who entered lawfully and have been present for one year
8 are eligible to adjust status to lawful permanent residence under the CAA. Cuban Adjustment Act
9 of 1966, Pub. L. 89-732, 80 Stat. 1161. The possibility that removal proceedings may be resolved
10 in Petitioner's favor — including through adjustment — weighs against a finding that removal is
11 likely, and makes ongoing detention without individualized review all the more unjustifiable.

12 In total, the *Banda* factors do not support continued mandatory detention. At minimum,
13 this Court should order an individualized bond hearing at which the government bears the burden
14 of justifying continued detention

15 **III. REVOCATION OF PETITIONER'S PAROLE WITHOUT A PRE-DEPRIVATION** 16 **HEARING VIOLATED DUE PROCESS.**

17 **A. Petitioner Possessed a Cognizable Liberty Interest in His Continued Freedom.**

18 Respondents acknowledge "weighty liberty interests" implicated by immigration
19 detention, but then argue that Petitioner's liberty interest is effectively zero because he
20 "voluntarily agreed" to the expiration of his parole. Dkt. # 10 at pp. 12-13. That argument is
21 without legal support and has been squarely rejected by courts in this District.

22 Noncitizens released on parole acquire a due-process-protected liberty interest in their
23 continued freedom. *Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL
24 242300, at *6 (S.D. Cal. Jan. 29, 2026). This liberty interest is analogous to — and in some

1 respects stronger than — the interests of individuals on supervised release or probation. *Jorge*
 2 *M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1054 (N.D. Cal. 2021). Critically, courts distinguish
 3 between the initial parole decision (part of the admissions process) and the revocation of parole
 4 after release, with the latter implicating stronger constitutional protections. *Guillermo M. R. v.*
 5 *Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal. 2025).

6 Respondents' claim that Petitioner "voluntarily chose" to be detained upon his parole's
 7 expiration is not the law. Dkt. # 10 at p. 13. Agreeing to a finite parole period is not equivalent to
 8 consenting to arrest and mandatory detention at any future moment of the government's
 9 choosing, without hearing and without cause. No case holds otherwise. The fact that parole
 10 expired does not extinguish the liberty interest that attached during Petitioner's authorized, years-
 11 long presence in the United States.

12 **B. The Mathews Balancing Test Favors Petitioner.**

13 Under *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), courts balance: (1) the private
 14 interest affected; (2) the risk of erroneous deprivation and the probable value of additional
 15 procedural safeguards; and (3) the government's interest. All three factors favor Petitioner here.

16 First, the private interest — physical liberty — is among the most fundamental interests
 17 recognized by law. *Zadvydas*, 533 U.S. at 690. Petitioner has been in the United States for over
 18 two years, has community ties, holds a valid EAD, and is pursuing lawful permanent residence.
 19 His interest in remaining free from detention is substantial.

20 Second, the risk of erroneous deprivation is high. Petitioner was arrested without any
 21 individualized assessment of flight risk or danger. Dkt. # 1 at p. 6. No determination was made
 22 that circumstances had changed since parole was granted. This is precisely the risk district courts
 23 have found warrants pre-deprivation review. *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323

(W.D. Wash. 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1137 (W.D. Wash. 2025). When U.S. Immigration and Customs Enforcement (ICE) re-detains individuals without any prior individualized assessment, the risk that the detention is erroneous — as a matter of both fact and law — is substantial.

Third, Respondents overstate the government's interest. Providing a pre-deprivation hearing requires modest expenditure of resources. That burden is far outweighed by the risk of detaining a person who poses no flight risk and no danger to the community — which is exactly what the evidence suggests here. Petitioner has no criminal history, was engaged in a lawful activity at the time of arrest, and was pursuing relief through lawful channels. *Esquivel Pacheco*, 2026 WL 242300, at *7.

Respondents' attempt to distinguish this Court's decision in *E.A.T.-B. v. Wamsley* fails. Dkt. # 10 at p. 12. They argue that 8 C.F.R. § 1236.1(c)(9) does not require an individualized finding of flight risk or danger before parole revocation, in contrast to § 1236.1(c)(8). *Id.* But that regulatory distinction does not answer the constitutional question. The *Mathews* balancing test is not avoided by pointing to a regulation that lacks procedural safeguards. If anything, the absence of regulatory protections heightens the constitutional concern. The Constitution supplies what the regulation omits.

IV. PETITIONER'S FOURTH AMENDMENT CLAIM IS COGNIZABLE IN THIS HABEAS ACTION AND CANNOT BE DISMISSED.

Respondents argue that Petitioner's Fourth Amendment claim is not cognizable in a habeas proceeding and that, even if valid, would not entitle him to release. Dkt. # 10 at pp. 14-18. These arguments are overstated.

First, habeas corpus has always extended to individuals "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). A claim that the

1 original seizure was unconstitutional under the Fourth Amendment — and that the resulting
2 immigration detention flows directly from that unlawful seizure — is precisely the kind of
3 constitutional challenge habeas was designed to address. Respondents cite *INS v. Lopez-*
4 *Mendoza*, 468 U.S. 1032 (1984), for the proposition that the remedy for an unlawful arrest in
5 civil removal proceedings is suppression, not release. But *Lopez-Mendoza* concerned evidence
6 suppression in a removal hearing — it did not address whether an unlawful arrest can form the
7 basis of a habeas petition challenging the lawfulness of ongoing custody.

8 Second, Respondents argue that because removal proceedings are underway, Petitioner's
9 custody flows from the INA rather than the arrest, making the arrest's legality irrelevant. Dkt. #
10 10 at p. 15. But that argument assumes the validity of the statutory basis for detention — which
11 is precisely what this Court must determine. If § 1225(b)(1) does not apply, and if § 1226
12 governs instead, the lawfulness of the initial stop and the adequacy of probable cause become
13 directly relevant to whether any warrant-based or warrantless arrest authority existed under §
14 1357. The Ninth Circuit interprets the "reason to believe" standard in § 1357 as equivalent to
15 probable cause. *United States v. Gorman*, 314 F.3d 1105, 1111 (9th Cir. 2002). There is no
16 evidence in the record that agents possessed individualized probable cause of unlawful presence
17 at the time of the stop.

18 The Fourth Amendment claim is properly before this Court and should not be dismissed.

19 **V. PETITIONER'S ADMINISTRATIVE PROCEDURES ACT (APA) CLAIMS ARE**
20 **COGNIZABLE AND COMPLEMENT HIS HABEAS CLAIMS.**

21 Respondents argue that the APA does not apply because habeas corpus provides an
22 "adequate remedy," citing *Trump v. J.G.G.*, 604 U.S. 670 (2025). Dkt. # 10 at p. 19. But that
23 argument misunderstands the scope of Petitioner's APA claims.

1 Petitioner does not simply assert that his detention is unlawful and seek release under the
2 APA instead of habeas. He separately challenges ICE's failure to exercise discretion in
3 accordance with its own parole and custody regulations — a challenge grounded in the *Accardi*
4 doctrine, which requires agencies to follow their own binding regulations. *United States ex rel.*
5 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). ICE's regulations provide for individualized
6 discretionary parole determinations; Respondents have treated detention as categorically
7 mandatory without engaging in that discretionary process. That failure constitutes arbitrary and
8 capricious agency action independent of whether habeas is available for the underlying
9 detention. 5 U.S.C. § 706(2)(A).

10 Moreover, *J.G.G.* addressed a scenario where the plaintiffs' APA claims were premised
11 on challenging the lawfulness of confinement itself — the same ground covered by habeas.
12 Where an APA claim targets agency conduct collateral to the detention decision itself (such as
13 failure to follow internal regulations), it is not displaced by § 2241. Petitioner preserves these
14 claims.

15 **VI. THE APPROPRIATE REMEDY IS IMMEDIATE RELEASE OR, IN THE**
16 **ALTERNATIVE, AN IMMEDIATE BOND HEARING.**

17 Because Petitioner's detention under § 1225(b)(1) is ultra vires, the appropriate remedy
18 is immediate release. Where detention lacks a valid statutory foundation, a court should grant the
19 writ. The Ninth Circuit has recognized § 2241 as the proper vehicle for this relief where
20 detention is contrary to federal law.

21 In the alternative, if this Court concludes that any ambiguity remains as to the applicable
22 statutory provision, it should hold that Petitioner is detained under 8 U.S.C. § 1226(a) and order
23 an immediate individualized custody redetermination hearing before an Immigration Judge. That

1 hearing should occur within seven days. The government should bear the burden of justifying
2 continued detention by clear and convincing evidence of flight risk or danger to the community.

3 Petitioner poses no danger to the community. He has no criminal history. He was
4 engaged in a lawful activity at the time of his arrest. He holds a valid Employment Authorization
5 Document, has complied with parole conditions for years, and is pursuing adjustment of status
6 through lawful channels. Cuba has indicated its willingness to accept him in the event of
7 removal, Dkt. # 10 at p. 6, but removal is far from certain given his pending I-485. Dkt. # 1-2 at
8 p. 14. Conditions of supervision — electronic monitoring or reporting requirements — can
9 adequately ensure his appearance. Continued detention serves no legitimate regulatory purpose.

10 **CONCLUSION**

11 For the foregoing reasons, Petitioner respectfully requests that this Court grant the
12 Petition for Writ of Habeas Corpus and order his immediate release from custody. In the
13 alternative, Petitioner requests that this Court declare his detention is governed by 8 U.S.C. §
14 1226(a) and order an immediate individualized custody redetermination hearing before an
15 Immigration Judge, at which the government bears the burden of proof by clear and convincing
16 evidence. Continued detention without such relief violates the Constitution and laws of the
17 United States.

18 Respectfully submitted this 24th of March 2026.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 3,266 words.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

We represent Petitioner, Roberto Bonat Hernandez, and submit this verification on his behalf. Petitioner is currently detained at the Northwest ICE Processing Center. We hereby verify that the factual statements made in the foregoing Traverse are true and correct to the best of our knowledge.

Dated this 24th day of March of 2026.

/s/ Danielle Richardson
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