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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

ADAM BRYANT PENA BECERRA, Petitioner, v. MARKWAYNE MULLIN, et al., Respondents.	Case No. 2:26-cv-00212-JNP SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE AND COMPLIANCE WITH COURT ORDER AT ECF NO. 25 Judge Jill N. Parrish

Respondents, *Markwayne Mullin,* in his official capacity as Secretary of the Department of Homeland Security, *Pamela J. Bondi,* in her official capacity as Attorney General of the United States, *Evan Tjaden,* in his official capacity as Acting Director of the Salt Lake Field Office of the Immigration and Customs Enforcement and Removal Operations Division, and *United States Immigration and Customs Enforcement*, in the above-entitled action, state as follows:

Petitioner filed for relief under 28 U.S.C. § 2241 on March 12, 2026. (ECF No. 1). On that same date, the Court issued an Order to Show Cause why the Petition for Habeas Relief should not be granted. (ECF No. 5). In compliance with the Court's order, Respondents filed their position on March 16, 2026. (ECF No. 11). Petitioner filed a reply, and the parties appeared before this Court on March 24, 2026. (ECF No. 23). Thereafter, the Court requested supplemental briefing on particularized issues. (ECF No. 25). In addition to their previously stated position in response to

this Court's Order to Show Cause (ECF No. 11) and as presented to the Court orally, the Respondents address each of the Court's inquiries in turn.

BRIEF SUMMARY OF FACTS

Below is a summary of the facts, including additional detail requested by the Court. Petitioner entered the United States without legal status. (ECF No. 1, pg. 3). Petitioner was "encountered by Border Patrol Agents in the bush in the Del Rio Sector area of operations. After a brief interview, it was determined that this subject was not a citizen or resident of the United States. Subject was placed under arrest, transported to a Border Patrol Station for further proceedings, and advised of their rights." (ECF No. 1-3, Record of Deportable/Inadmissible Alien). This encounter was on or about August 2, 2023.

On or about August 3, 2023, a warrant for arrest of alien was issued for Petitioner. (*See Exhibit 1).*

On or about August 12, 2023, Petitioner was granted release on his own recognizance. (ECF No. 1-4, Notice of Custody Determination). As a condition of this release, Petitioner was given a list conditions, including that "You must not violate any local, State, or Federal laws or ordinances." (ECF No. 1-5, Order of Release on Recognizance). Also on or about August 12, 2023, Petitioner received a Notice to Appear (NTA) document that, among other things, indicated he had not been admitted or paroled into the United States, that he was subject to removal under 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), which reads "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." (ECF 1-2, Notice to Appear dated August 12, 2023; 8 U.S.C. § 1182(a)(6)(A)(i)). The second page of this states that there is a "one-year asylum application deadline." (ECF 1-2, Notice to Appear dated August 12,

2023). On this same date, August 12, 2023, that Petitioner was served with a copy of Exhibit 1, a warrant for his arrest.

Later, a superseding NTA was issued. (ECF No. 11-1, Notice to Appear Dated December 5, 2023). This newer NTA indicates it supersedes the prior NTA dated August 12, 2023 and also states at the top "allegations: admits all; charges: concedes all." *Id.* Both NTAs also contain a provision that states the petitioner had a "mandatory duty to surrender to removal." *Id.*

Petitioner then made a claim of asylum, dated September 16, 2024, and received on or about September 26, 2024 (ECF No. 1-1). This was more than a year after his initial entry to the United States, and more than a year after his first NTA was issued on or about August 12, 2023.

On or about October 3, 2025, Petitioner appeared in immigration court. At this time, Petitioner was informed that his application for asylum was denied and that he was ordered removed to Venezuela. Petitioner has appealed his removal order that is still pending before the Board of Immigration Appeals (BIA).

On or about March 5, 2026, Petitioner was arrested for operating a vehicle without a license, valid insurance, possession of marijuana, and possession of drug paraphernalia. (ECF No. 11-2). Subsequent to his arrest, BIA was notified and Respondents lodged a detainer. He was transferred to Respondents' custody upon his release from state custody.

LEGAL ARGUMENT

I. Respondents Provided Petitioner with an Original Warrant in 2023.

Respondents maintain the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225 ("§ 1225") as an applicant for admission. Respondents' current interpretation of § 1225 has been upheld by both the 8th Circuit and 5th Circuit Courts of Appeal and a court in this district. Respondents recognize, however, this Court's prior rulings to the contrary. Accordingly,

for the purposes of this argument, the Respondents will address Petitioner's status as if he falls under 8 U.S.C. § 1226 ("§ 1226").

Relevant to the Court's current analysis, 8 U.S.C. § 1226(a) states as follows:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> **(1)** may continue to detain the arrested alien; and
> **(2)** may release the alien on—
> **(A)** bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> **(B)** conditional parole; but
> **(3)** may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

The provisions under § 1226 are contingent upon a warrant issued by the Attorney General. The Court requested this briefing to determine if such a warrant exists and, if so, to provide it. As detailed in the factual summary and attached in Exhibit 1, Petitioner was in fact provided with a copy of the warrant for his arrest. The details of service are detailed in the "Certificate of Service" portion of Exhibit 1.

The Court had requested briefing as to "whether an 'original warrant' is required to revoke Petitioner's bond, under the statute and based on the facts of this case." (ECF No. 25). The Court need not reach this question based on the facts of this case.[1]

1 Respondents maintain the position stated in Court. If no warrant existed, Petitioner's prior release on recognizance did not change his status as an applicant for admission under § 1225 and somehow switch him to the statutory framework under § 1226. The circumstances of his arrest control whether he is under § 1225 or § 1226. The documentation allowing his release does not alter those facts.

II. Respondents Have Broad Authority to Revoke Bond and Parole.

Under § 1226, Petitioner may be released on bond or conditional parole. There is no evidence to support Petitioner was ever paroled into the United States, nor does he make that claim. According to his records, Petitioner was released on his own recognizance. (ECF No. 1-4) on or about August 12, 2023. This Notice of Custody Determination does not indicate Petitioner was "under bond" and states Petitioner does *not* request an immigration judge review this custody determination. (ECF No. 1-4). From these statements, it is unclear if Petitioner had a formal bond hearing or was released on his own recognizance based on a determination made by the Border Patrol agents. However, Petitioner declined a custody determination from an immigration judge, which would have been a bond hearing. Such release is consistent with 8 C.F.R. § 236.1(c)(8) which states, "Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act."[2]

Based on this, Petitioner's release would also be governed by 8 U.S.C. § 1226(b), which provides, "Revocation of bond or parole: The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." Additional guidance is provided in 8 C.F.R. § 236.1(c)(9), which states:

> When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

2 References to 236(c)(1) and 236(a)(2) correspond to § 1226 that is previously cited in this brief.

Both provide Respondents with broad latitude to revoke or cancel Petitioner's release status or bond at any time. It allows officers in charge with authority to make these discretionary decisions, and individuals, such as Petitioner, can be rearrested on the original warrant. In addition to this authority that does not require any particular showing, Respondents aver Petitioner has violated the conditions of his release by being arrested for state crimes.

The Court has inquired as to whether a conviction for these state level offenses is necessary prior to subjecting Petitioner to a revocation of his release. Other subsections of the Immigration and Nationality statutes explicitly state a conviction is necessary to trigger the provisions, such as those listed in 8 U.S.C. § 1227. The fact that conviction language is absent from both § 1226(b) and 8 C.F.R. § 236.1)(c)(9) is telling. Both statutes reference convictions for offenses in other subsections but not in the portion addressing Respondents' authority to revoke bond or parole. Even in criminal proceedings, the Court does not need a new criminal conviction to modify or revoke conditions of release for defendants who are on pretrial release or supervised release post-conviction conditions. Courts consistently consider the facts and circumstances of any new arrest or interaction with law enforcement in adjusting or remanding a defendant to custody.

Therefore, this Court should read § 1226(b) and 8 C.F.R. § 236.1)(c)(9) as written to allow Respondents with broad authority to revoke Petitioner's release status, regardless of his arrest, and to additionally find that Petitioner's arrest is another basis to revoke his release on recognizance because he violated his conditions.

III. Petitioner has Been Afforded Adequate Due Process for his Detention.

Petitioner has been afforded adequate due process for his release conditions being revoked. Respondents have found limited authority addressing this issue and are unaware of controlling authority on this precise issue. However, a judge in the District of Oklahoma has considered a

question similar to the one before this Court. While the District of Oklahoma did not conduct a full analysis of the due process claims because it was inadequately briefed by the parties, it made the below findings that can be instructive here:

> On careful consideration of the statute, the implementing regulations, and the BIA's decisions in Sugay and Valles-Perez, the Court rejects petitioner's claim that the DHS has no authority to revoke a bond issued by an immigration judge. The plain language of § 1226(b) provides DHS broad authority: "The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). True, as petitioner argues, this language refers to "a bond or parole authorized under subsection (a)." Dkt. # 12, at 8. But the Court disagrees with petitioner's position that the only bond "authorized under subsection (a)" is the first bond, if any, that is issued by DHS before any bond redetermination by an immigration judge. *Id.* Subsection (a) authorizes DHS to detain noncitizens during the pre-removal period and, except for those noncitizens described in subsection (c) authorizes DHS to release noncitizens on bond or conditional parole. 8 U.S.C. § 1226(a). Other than setting a minimum bond amount, subsection (a) largely leaves the details of bond and conditional parole to the discretion of DHS. *Id.* Thus, a bond "authorized under subsection (a)" simply refers to a bond issued to a noncitizen who is eligible for release at DHS's discretion. Subsection (b) therefore broadly authorizes DHS to revoke a bond issued to a noncitizen who is eligible for release under subsection (a), regardless of whether the bond is issued by a DHS officer or by an immigration judge. And, while BIA decisions are not binding on this Court, the Court finds that Sugay and Vallez-Perez reasonably read § 1226(b) and the language now found in 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9) as permitting DHS broad authority to revoke a bond, even one issued by an immigration judge. Valles-Perez is persuasive on this point because there, the BIA explained that "bond proceedings differ greatly from other immigration proceedings" and a noncitizen "remains free to request a bond redetermination at any time without a formal motion, without a fee, and without regard to filing deadlines, so long as the underlying deportation proceedings are not administratively final." 21 I. & N. Dec. at 771 & n.2. Thus, as respondents state, and as petitioner acknowledges, a noncitizen who is re-detained after DHS exercises its broad authority to revoke a bond—even one issued by an immigration judge—may (again) seek a custody redetermination from an immigration judge and may appeal an adverse decision to the BIA. Dkt. # 10, at 4; Dkt. # 18, at 3.

Salvador F.-G. v. Noem, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *8 (N.D. Okla. June 12, 2025). The court analyzed the plain language of the statutes to allow Respondents broad discretion in revoking bond or parole, regardless of how the original determination for bond or

parole was made. Pertinent to the issue of due process, the court echoed the Board of Immigration Appeals (BIA) in ruling that an individual may, at any time, seek a bond redetermination without formal motion and without fee. This fact affords Petitioner due process within the context of his immigration proceedings as to his detention, or in this case, re-detention status. The appropriate avenue for him to request a bond redetermination exists, and, at this stage, it is not this Court. Petitioner has not indicated if he has requested a bond hearing since his 2026 detention. Regardless, under 8 C.F.R. 236.1(d), Petitioner has appeal options that exist "at any time before an order under 8 CFR part 240 becomes final." Because Petitioner has been afforded adequate process within the immigration courts, there is no due process violation that this Court must address.

The Respondents anticipate Petitioner will argue that they must show a material change in Petitioner's circumstance prior to revoking his release status. On this issue, the District of Oklahoma judge found:

> The only remaining question, according to petitioner, is whether DHS is required to "establish the existence of materially changed circumstances before it can exercise its authority to re-detain under 8 U.S.C. § 1226(b)." Dkt. # 18, at 6. It is not entirely clear whether petitioner raises this question as part of his statutory claim or as part of his Fifth Amendment due process claim. *Id.* However, to the extent this is part of his statutory claim, the Court finds nothing in the plain language of subsection (b) imposing a requirement of changed or materially changed circumstances. Rather, as previously stated, DHS "at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). The implementing regulation is likewise broad, providing that when a noncitizen has been released, "such release may be revoked at any time in the discretion of the district director [and certain other officials], in which event the alien may be taken into physical custody and detained." 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9). Nothing in the statute or the regulation even hints at a change in circumstances requirement. Even accepting that the BIA chose to impose that requirement in Sugay and that the DHS typically applies that requirement when it exercises its discretionary authority under § 1226(b), the Court has no authority to read that requirement into the clear and unambiguous language of the statute. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (explaining that federal agencies "are free to grant additional procedural rights in the exercise of their discretion" whereas reviewing courts "are

> generally not free to impose them if the agencies have not chosen to grant them" (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978))). As a matter of statutory interpretation then, the Court finds no support for imposing a "change in circumstances" requirement on DHS before it can revoke a bond under § 1226(b). The Court therefore denies the petition as to petitioner's statutory claim.

Id. at *9. Again, the court rejected the imposition of an additional standard on Respondents beyond what has been described in the statute.

Therefore, this Court should reject Petitioner's arguments of a due process violation.

IV. Preliminary Risk Classification Assessment Does Not Bind the Respondents.

The Risk Classification Assessment Detailed Summary submitted to the Court is a preliminary assessment done by an officer or someone assisting an officer, including those who are serving a short-term detail such as a National Guard Soldier that may be untrained in the various legal provisions and assessments. The document gathers a wide variety of information and does not necessarily reflect any final legal determinations about a person's detention status. The document includes a checked box that detention is not mandatory, but it also includes another statement that "the alien is charged under INA 212(a)(6)(A)(i) [Alien present w/o admission or parole]" and includes the bolded starred proviso "**indicates an INA charge that will flag the alien as mandatory detention per statutes and allegation.**" The document is a printout of a database as of March 8, 2026. Information input into that database can be updated/changed if needed. It is the current position of ICE that the box stating that the alien is "not subject to mandatory detention per statutes and allegations" was entered erroneously, without any legal basis. This assessment was not made in consultation with any counsel and does not reflect Respondents' current position as to Petitioner's detention status under the law. Additionally, the document contains information that Respondents deem law enforcement sensitive, and request it not be disclosed to any individual

besides the Court, Petitioner, and Petitioner's counsel.

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Petition.

RESPECTFULLY SUBMITTED on this 1st of April, 2026.

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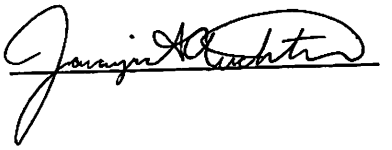

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st of April, 2026, the foregoing document has been filed electronically through the District of Utah ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Jawayria Z. Auchter
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