

District Judge Tana Lin

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

YORNELYS CRESPO ORELLANA,

Petitioner,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT FIELD OFFICE
DIRECTOR,

Respondent.

Case No. 2:26-cv-00989-TL

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted For Consideration:
April 13, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Yornelys Crespo Orellana at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b)(2)(A).

Petitioner asserts that she was detained at an asylum interview and has been detained for 120 days. Dkt. 4, pg. 3. She also asserts that she is married to a U.S. citizen spouse. *Id.* For relief, Petitioner states "I would like to fight my case outside of [d]etention..." Dkt. 4, pg. 3. Petitioner believes she is detained pursuant to 8 U.S.C. § 1226(a) and that her confinement of 120 days is excessive. Dkt. 4, pg. 7, 10.

Petitioner entered the United States without permission but she was not encountered by

1 immigration authorities at the time. In 2023, she was granted Temporary Protected Status ("TPS")
 2 but it subsequently expired. She was detained by immigration authorities when she reported for an
 3 interview with U.S. Citizenship and Immigration Services ("USCIS") and was issued a notice to
 4 appear. Shortly after she filed her habeas petition, she withdrew all her claims for relief and
 5 requested voluntary departure, which the immigration court granted. The immigration judge
 6 determined she would remain detained while returned to Venezuela. ICE is making arrangements
 7 to return Petitioner to Venezuela, in accordance with her request for voluntary departure.

8 Petitioner's habeas should be denied.

9 II. BACKGROUND

10 A. Petitioner Yornelys Crespo Orellana

11 Petitioner is a citizen of Venezuela that entered the United States on an unknown date.
 12 Declaration of Jordan Steveson ("Steveson Decl."), Exh. A, Form I-213. Petitioner was not
 13 encountered when she entered the United States, but she did file applications for immigration relief
 14 with U.S. Citizenship and Immigration Services ("USCIS"). *Id.*; Declaration of Deportation
 15 Officer Paul Correa ("Correa Decl."), ¶ 3. Petitioner was granted Temporary Protected Status
 16 ("TPS") on April 24, 2023, Steveson Decl., Exh. A, Form I-213. However, Petitioner has not
 17 renewed her TPS and it expired. *Id.*

18 On September 27, 2024, Petitioner was arrested in Florida on charges of Destruction of
 19 Evidence, Tampering with Physical Evidence, and Harboring an Escapee/Fugitive. Correa Decl.
 20 ¶ 4. The charges remains pending. *Id.*

21 Immigration authorities learned that [REDACTED]

22 [REDACTED] Correa Decl., ¶ 5. On November 20, 2025, Petitioner was scheduled for an interview
 23 with USCIS. *Id.* At the interview, Petitioner was arrested by immigration authorities. *Id.*; Steveson
 24 Decl., Exh. A, Form I-213. It should be noted that in the arrest report, the investigator stated that

Petitioner “may be in violation of the terms of his/her admission.” Steveson Decl., Exh. A, Form I-213. Petitioner has not been admitted into the United States; she entered at an unknown time and date. *Id.* Receiving TPS is not an admission into the United States. *Sanchez v. Mayorkas*, 593 U.S. 409, 419 (2021).

Immigration authorities informed Petitioner that she would be detained, and Petitioner requested a bond hearing. Correa Decl., ¶ 6. A bond hearing was not scheduled. *Id.*

ICE issued Petitioner a notice to appear on November 20, 2025 and then again on December 4, 2025. Steveson Decl., Exh. B, Notice to Appear; Correa Decl., ¶ 6. Petitioner is charged as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without being admitted or paroled or who arrive at an undesignated time or place. *Id.*

On March 27, 2026, Petitioner requested and was granted pre-conclusion voluntary departure. Steveson Decl., Exh. C, IJ Order. Petitioner was represented by legal counsel at the time. *Id.* The immigration judge found Petitioner was removable as charged in the notice to appear. *Id.* Petitioner withdrew all applications for relief. *Id.* The immigration judge ordered Petitioner to depart by April 27, 2026. *Id.* The departure was under safeguards. *Id.* Petitioner waived appeal. *Id.*

Initially, DHS reserved appeal on the grant of voluntary departure. Steveson Decl., Exh. C, IJ Order. However, DHS subsequently rescinded its opposition and will not appeal. Correa Decl., ¶ 7. ICE is making arrangements to return Petitioner to Venezuela. Correa Decl., ¶ 8.

B. Detention Authority

Petitioner is an applicant for admission. ICE detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (affirming the government’s position that aliens who have not been admitted or are not entitled to be admitted to the United States are “applicants for admission” who are subject to mandatory detention under Section 1225(b)(2)(A)). Section 1225 applies to “applicants for admission” to the United States,

1 who are defined as “alien[s] present in the United States who [have] not been admitted” or
2 noncitizens “who arrive[] in the United States,” whether or not at a designated port of arrival. 8
3 U.S.C. § 1225(a)(1).

4 As the Fifth Circuit recently found, aliens who are present without admission in the United
5 States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-Mendez*, 166
6 F.4th at 502. The court clarified that an “applicant for admission” is a person “seeking admission”
7 regardless of whether that person is actively engaged in admissions procedures when detained. *Id.*,
8 at 502-06. The Eighth Circuit has agreed that the two terms are the same. *Avila v. Bondi*, No. 25-
9 3248, 2026 WL 819258, at *3 (8th Cir. Mar. 25, 2026) (“[W]hile an alien remains an ‘applicant
10 for admission’ so long as he is ‘present in the United States [and] has not been admitted,’ 8 U.S.C.
11 § 1225(a)(1), he is also ‘presently seeking admission’ during this time, regardless of whether he
12 takes ‘any further affirmative steps to gain admittance.’ *Buenrostro-Mendez*, 166 F.4th at 402.”)

13 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
14 “for urgent humanitarian reasons or significant public benefit,” § 1182(d)(5)(A).” *Jennings v.*
15 *Rodriguez*, 583 U.S. 281, 283 (2018). This parole terminates automatically at the expiration of the
16 time for which parole was authorized, or upon service of a charging document for either expedited
17 removal proceedings under Section 1225(b) or removal proceedings under Section 1229a. 8
18 C.F.R. §§ 212.5(e)(1), (2)(i). Upon termination of parole, the applicant reverts to the status that
19 he or she had at the time of parole. *See id.*

20 On July 8, 2025, DHS issued a memorandum to ICE employees explaining that DHS had
21 revisited its legal position on detention and release authorities. *Rodriguez Vasquez v. Bostock*, 802
22 F. Supp. 3d 1297, 1308 (W.D. Wash. 2025). The memorandum defined an “applicant for
23 admission” as “an alien present in the United States who has not been admitted or who arrives in
24 the United States, whether or not at a designated port of arrival. *Id.* (citing 8 U.S.C.

1 § 1225(a)(1)). Prior to July 2025, DHS allowed discretionary releases of aliens that fit the
 2 definition of an applicant for admission pursuant to 8 C.F.R. § 1236.1(c)(8), instead of only
 3 utilizing parole, like what occurred here. But the memorandum clarified, “Effective immediately,
 4 it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)] and
 5 may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)].” *Rodriguez Vasquez*,
 6 802 F. Supp. 3d at 1308.

7 DHS’s prior practice of OREC releases for applicants for admission does not mean that
 8 those aliens are no longer applicants for admissions. *Buenrostro-Mendez v. Bondi*, 166 F.4th at
 9 506 (“While that is true, the government’s past practice has little to do with the statute’s text. The
 10 text says what it says, regardless of the decisions of prior Administrations. Years of consistent
 11 practice cannot vindicate an interpretation that is inconsistent with a statute’s plain text.”); *Avila*,
 12 2026 WL 819258, at *5 (“[N]either *Jennings* nor the Government’s history of enforcing § 1225
 13 confines the Government’s authority to detain aliens under § 1225(b)(2)(A) to the border.”).

14 C. Voluntary Departure

15 Voluntary departure may be granted prior to the completion of immigration proceedings.
 16 8 U.S.C. § 1229c(a)(1). An immigration judge may “impose such conditions as he or she deems
 17 necessary to ensure the alien’s timely departure from the United States...” 8 C.F.R. §
 18 1240.26(b)(3)(i). If an individual agrees to voluntary departure, but then fails to comply or attempts
 19 to challenge through a motion to reconsider, it automatically converts into an alternate order of
 20 removal. 8 C.F.R. § 1240.26(b)(3)(B)(ii)-(iii). This carries legal consequences should a noncitizen
 21 wish to return to the United States. *See e.g.* 8 U.S.C. §§ 1182(a)(9)(A); 1326(a).

22 III. LEGAL STANDARD

23 “The district courts of the United States . . . are courts of limited jurisdiction. They possess
 24 only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopach Servs.*,

1 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
 2 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland*
 3 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
 4 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
 5 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
 6 or treaties of the United States. See 28 U.S.C. § 2241(c)(3), *Lambert v. Blodgett*, 393 F.3d 943,
 7 969 n.16 (9th Cir. 2004).

8 IV. ARGUMENT

9 Petitioner is not entitled to release. Federal Respondents’ assert that Petitioner is
 10 mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, 166
 11 F.4th at 506-508; *Avila v. Bondi*, 2026 WL 819258 at *3. Federal Respondents are aware that
 12 courts in this district have found that individuals in similar situation to Petitioner are subject to
 13 Section 1226(a), not Section 1225(b). Federal Respondents are aware that courts in this district
 14 have found that individuals in similar situations to Petitioner are subject to Section 1226(a), not
 15 Section 1225(b). See e.g., *Herrera Gomez v. Wamsley*, No. 2:25-CV-02642-JNW, 2026 WL
 16 279966, at *2 (W.D. Wash. Feb. 3, 2026). The facts of this case are distinguishable and do not
 17 merit the grant of habeas corpus.

18 After this habeas was filed Petitioner requested pre-conclusion voluntary departure, with
 19 immigration legal counsel, in the immigration proceedings. Steveson Decl., Exh. C, IJ Order. A
 20 voluntary departure may benefit Petitioner. For example, Petitioner reports that she is married to
 21 a U.S. citizen. Dkt. 4, pg. 3. However, as she has not been admitted into the United States, it is
 22 unlikely that she can become a lawful permanent resident without first leaving the United States
 23 and seeking a legal admission. See 8 U.S.C. § 1255(a), *Sanchez v. Mayorkas*, 593 U.S. at 416-419.

24 Federal Respondents assert that due process does not compel Petitioner’s release due to the

1 circumstances of this case. "Due process is flexible and calls for such procedural protections as
2 the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls
3 for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk
4 of an erroneous deprivation of such interest through the procedures used, and probable value, if
5 any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at
6 334-35. Due process does not mandate release here.

7 As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests
8 implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021
9 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that
10 noncitizens released from immigration detention have a protected liberty interest in remaining out
11 of custody, the weight of that liberty must be considered in the broader picture of the immigration
12 system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. After
13 all, "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
14 Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to
15 aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th
16 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme
17 Court has explained, "[i]n the exercise of its broad power over naturalization and immigration,
18 Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v.*
19 *Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention
20 during deportation proceedings as a constitutionally valid aspect of the deportation process."
21 *Demore*, 538 U.S. at 523. Federal Respondents recognize that Petitioner has an interest in
22 concluding her immigration proceedings prior to any removal from the United States. However,
23 at this time Petitioner appears to be attempting to avoid a removal order, and would prefer to
24 voluntarily depart. Her detention is about to end with her return to Venezuela, which ICE is

1 working towards. Correa Decl. ¶ 8

2 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
3 erroneous deprivation of Petitioner's liberty is minimal here. Petitioner previously received TPS,
4 but it was not renewed and has expired. Furthermore, she is now seeking to voluntarily depart to
5 Venezuela—relief she sought from the immigration court with the assistance of her legal counsel.

6 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
7 test and procedural safeguards “must account for the heightened government interest in the
8 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s
9 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government
10 clearly has a strong interest in preventing aliens from remain[ing] in the United States in violation
11 of our law.” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is
12 especially true when it comes to determining whether removable aliens must be released on bond
13 during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208.

14 In this instance, Petitioner’s proceedings have concluded and she will soon be returned to
15 Venezuela. Although an immigration judge found that she is removable, she is being accorded the
16 benefit of voluntary departure under safeguards.

17 Accordingly, this Court should deny her request for release from immigration custody.

18 V. CONCLUSION

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

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1 DATED this 7th day of April, 2026.

2 Respectfully submitted,

3 s/ Jordan C. Steveson

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13 *I certify that this memorandum contains 2,316*
14 *words, in compliance with the Local Civil Rules.*