

Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G.R.R.,

Petitioner,

vs.

JULIO HERNANDEZ, et al.,

Respondents.

Case No. 2:26-cv-01000-BAT

Agency No. A 

PETITIONER'S TRAVERSE

Oral argument requested

Noted for consideration
April 13, 2026

For his traverse against respondents' return, petitioner states as follows.

I. Summary of petitioner's claim.

Petitioner's claim in summary is that respondents violated his right to due process of law by revoking his bond without first giving him a hearing. For this reason, the court should grant the writ of habeas corpus.

II. Motion to strike

Respondents submit the declaration of Deportation Officer Kurtis Reed, but no documents from the administrative record. ECF 5. A declaration must be based on personal knowledge. *Hexcal Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) and courts may strike declarations that are not. *Reed v. Kariko*, Case No.

1 3:20-cv-05580-BHS-DWC, 2021 U.S. Dist. LEXIS 108199, 2021 WL 4290171, at *1
2 (WD Wash. Sept 21, 2021). DO Reed does not state in his declaration that it is based
3 on personal knowledge, and it's obvious from the broad description of events in this
4 case that it could not be based on personal knowledge.
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6 Instead, the court has only the declaration of DO Reed as to what those
7 documents state. Absent such documents, petitioner's ability to controvert the
8 declaration is materially impeded as it the court's ability to evaluate the accuracy of
9 DO Reed's description. The few documents submitted with ECF 7 are insufficient to
10 allow evaluation of the narrative of DO Reed.
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12 Accordingly, there is prejudice to the petitioner from failure to submit either the
13 documents or a declaration based on personal knowledge, and DO Reed's declaration
14 should therefore be stricken. See *Aleman v. Bondi*, Case No. 2:25-cv-02346-JNW
15 (WD Wash. Jan 14, 2026).
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19 **III. This court has jurisdiction.**

20 Section 1252(g) provides that "no court shall have jurisdiction to hear any cause
21 or claim by or on behalf of any alien arising from the decision or action by the
22 Attorney General to commence proceedings, adjudicate cases, or execute removal
23 orders against any alien under this chapter." 8 U.S.C. § 1252(g). This provision is to
24 be interpreted narrowly. It is limited to it to only "three discrete actions": the
25 ""decision or action' to 'commence proceedings, adjudicate cases, or execute removal
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orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999) ("AADC").

AADC rejected any reading of the statute that would cover "the universe of deportation claims," *id.*, and cautioned against interpreting it to "sweep in any claim that can technically be said to 'arise from'" these three actions, *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); see AADC, 525 U.S. at 482 ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.").

"[T]he proper jurisdictional analysis under Section 1252(g) focuses on the government action or decision that gives rise to the plaintiff's claims, not whether the plaintiff's claims might affect or preclude removal." *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 908 (W.D. Wash. 2025). Challenges to the legality of detention or the revocation of supervised release are not barred by section 1252(g). See *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 U.S. Dist. LEXIS 162519, 2025 WL 2430267, at *7 (D. Or. Aug. 21, 2025) ("Courts have 'distinguished between challenges to ICE discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not.'" (citation omitted)).

In *Sering Ceesay v. Kurzdorfer*, jurisdiction was found where the petitioner "d[id] not challenge ICE's ability to remove him but only the legality of his current

1 detention" and "ICE's ability to hold him in detention without adequate process for
2 weeks and months on end[.]" 781 F. Supp. 3d 137, 2025 WL 1284720, at *9-10.

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4 Likewise, in *M.S.L. v. Bostock*, jurisdiction was found where the petitioner
5 was "not challenging her order of removal" but was rather challenging "the present fact
6 of her detention and the lack. of process surrounding her detention," including the lack
7 of process surrounding the revocation of her OSUP. 2025 U.S. Dist. LEXIS 162519,
8 2025 WL 2430267, at *7.

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10 Here petitioner's claims include the lawfulness of his detention. This Court
11 therefore has jurisdiction over these claims. See *Aleman v. Bondi*, Case No. 2:25-cv-
12 02346-JNW (WD Wash. Jan 14, 2026), at *6. *Aleman and Rauda v. Jennings*, 55 F.4th
13 773, 777-78 (9th Cir. 2022), cited by respondents, involved challenges to claims
14 seeking only a stay of removal, and not to the lawfulness of the detention. Further, the
15 petitioner in *Aleman* sought stays of removal to allow sufficient time to file a motion to
16 reopen, *id.*, at *8-9, which the Ninth Circuit had rejected as a basis for jurisdiction in
17 *Rueda, id.*, at 779-80. That form of relief is not sought here.¹

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¹ Respondents also rely on *Velasco-Gomez v. Scott*, Case No. C25-0522JLR-BAT (WD Wash. June 20, 2025), but that case was based on a ruling that a person granted U-visa deferred through a bond fide determination ("BFD") was barred by section 1252(g) from challenging execution of a removal order. *Id.*, at *15. But *Velasco-Gomez* acknowledged lack of precedent on this issue: "The parties have not identified – and the court is not aware of – any case authority addressing the narrow issue of whether § 1252(g) bars review of a decision to execute a valid removal order where the petitioner has been granted deferred action through the BFD process." *Id.*, at *14. Since then, a number of precedents have found that section 1225(g) does not bar jurisdiction over persons granted BFD deferred action. See e.g. *B.D.A.A. v. Hermosillo*, Case No. 6:25-cv-02062-AA (D. Or., Dec 4, 2025). Accordingly, *Velasco-Gomez* probably would have found jurisdiction over the petitioner's claim, section 1225(g) notwithstanding.

Respondents cite *Khotesouvan v. Morones*, 386 F. 3d 1299, 1301 (9th Cir. 2004) for the proposition that the court has no jurisdiction over a petition for habeas corpus which is filed within the ninety-day removal period, regardless of whether that period has run by the time the court adjudicates the case, which is necessarily the case here, as the ninety-day period expired on April 6, 2026.² Read carefully, *Khotesouvan* stands for no such proposition.

In *Khoteouvan* the petitioners filed their petitions between May 4 and May 7, 2004, when they had been in custody for about 60 days. The court decided against them on May 12, 2004, which necessarily was before the ninety-day period had run.

Here, respondents cite no case which finds that this court would lose jurisdiction once the ninety-period has run before the court rules on the case, which would in any case produce the unsound result of needlessly requiring a duplicative second petition filed after the ninety-day period had run.

IV. Petitioner is wrongfully detained.

Petitioner's release status was revoked without a hearing. This was a violation of due process. *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, *2 (E.D. Cal. Sept 9, 2025) (revocation of an OREC requires a pre-detention hearing to determine if that noncitizen is a flight risk or a danger to the community)

² Respondents appear to argue there is some kind of ambiguity here as to whether the ninety-day period has run. See Reply, ECF 5, at 6 ("[P]etitioner has only now been detained *approximately* 90 days.") (emphasis added). There is no "approximately" here. Simple counting of the days shows that the ninety-day removal period expired on April 6, 2026.

1 and *Pinchi v. Noem*, 792 F.Supp. 3d 1025, 1038 (N.D. Cal 2025) (pre-detention
2 hearing required prior to revocation of the petitioner's release on her own
3 recognizance).
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5 In *E.A.T.-B v. Wamsley*, 795 F.Supp.3d 1316 (WDWA Aug. 19, 2025) authority
6 contrary to their position. *E.A.T.-B.*, the petitioner was a citizen of Columbia who
7 entered the United States on or about September 6, 2023, and was thereafter processed
8 for removal proceedings by Border Patrol. *Id.*, at 1319. After two days of detention,
9 an ICE officer released him on an order of recognizance, requiring him to, among
10 other things, enroll in and comply with the Alternatives to Detention ("ATD")
11 program. *Id.* He was ordered to report to the ICE office in Portland, Oregon, and was
12 given a Notice to Appear in immigration court in Portland on December 3, 2024. *Id.*
13 The petitioner filed an application for asylum in February 2024. *Id.*
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18 In *E.A.T.-B.* the petitioner's appearance in immigration court case was continued
19 from December 3, 2024, to June 5, 2025, and in January 2025 his reporting
20 requirements under ATD were reduced. *Id.* In February 2025 USCIS granted him
21 work authorization. *Id.*
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23 When *E.A.T.-B.* appeared at his immigration court hearing, unrepresented by
24 counsel, the government moved to dismiss the removal proceedings to allow it to
25 pursue expedited removal proceedings against him. *Id.* The immigration court
26 continued the case until June 18, 2025, to allow the petitioner to respond to the
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1 government's motion. *Id.* At the June 18, 2025, hearing, petitioner appeared with
2 counsel and the government withdrew its motion to dismiss the proceedings. *Id.*

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4 Government agents followed E.A.T.-B after he left the court on June 18, 2025,
5 and arrested him under 8 U.S.C § 1226, claiming they were doing so because he'd
6 missed appointments. *Id.* When this was disputed by counsel the agents stated that
7 E.A.T.-B was being arrested because of "enforcement priorities[.]" *Id.*

8
9 In *E.A.T.-B*, the court applied the three-part test from *Mathews v. Eldridge*, 424
10 U.S. 319, 332 (1976) to find that the petitioner had a liberty interest protected by the
11 Due Process Clause of the Fifth Amendment. *E.A.T.-B.*, 795 F.Supp., at 1320.

12
13 The government argued that because E-A-T.-B had been initially released
14 subject to ATD conditions at ICE's discretion, he could not have a protected interest in
15 his liberty if it depended on the government's discretion. *Id.*, at 1321. This argument
16 was rejected by *E.A.T.-B.*, with the court stating "[t]hat the Government exercises
17 discretion in determining whether and which conditions of release to impose does not
18 eliminate the protections afforded to Petitioner's liberty interest." *Id.* (citations
19 omitted).

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21 As to the *Mathews* second factor, the risk of erroneous deprivation of liberty,
22 *E.A.T.-B* noted the various explanations given by the government for the petitioner's
23 arrest, and also the government's having reduced his ATD obligation and issued the
24 petitioner work authorization, "raise[d] concerns that Petitioner's arrest was not in fact
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1 motivated by his ATD violations.” *Id.* The court stated that “ICE’s decision to release
2 Petitioner was based on a consideration of the danger that Petitioner posed to the
3 community and the likelihood that would appear for further hearings.” *Id.*, citing 8
4 C.F.R. § 1236.1(c)(8). The court then stated that “arresting and re-detaining him at
5 this point without first reconsidering those factors poses a significant risk of an
6 erroneous deprivation of Petitioner’s liberty.” *E.A.T.-B.*, 795 F.Supp., at 1322.
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9 *E.A.T.-B.* then considered the third Mathews factor, the government’s interest in
10 civil detention without a hearing, and found that it was low and did not justify re-
11 detention without a hearing after the petitioner had been released. *Id.*, at 1323.
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13 **V. The facts here match precedent and require grant of the writ.**
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15 The facts here nearly replicate those of *E.A.T.-B.* On October 18, 2023,
16 petitioner appeared with counsel at an in-custody bond hearing. ECF 7-1, at 4. The
17 immigration judge granted petitioner a release on bond of \$9,000. *Id.* The heavily
18 redacted I-213 (ECF 7-1) provides no evidence as to the basis of the bond revocation.
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20 **First Mathews factor.**
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22 The first *Mathews* factor considers "the private interest that will be affected by
23 the official action[.]" *Mathews*, 424 U.S. at 335. Freedom from detention "is the most
24 elemental" of private interests affected by official action. *Hamdi v. Rumsfeld*, 542 U.S.
25 507, 529 (2004). Even conditional release "is valuable and must be seen as within the
26 protection of the [Due Process Clause]." *Morrissey v. Brewer*, 408 U.S. 471, 482
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1 This same principle applies to noncitizens who are paroled into the United
2 States. See *Espinoza v. Kaiser*, 2025 WL 2675785, at *9 (E.D. Cal. Sept. 18, 2025)
3 ("When an immigrant is placed into parole status after having been detained, a
4 protected liberty interest may arise.").

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6 Courts in this Circuit have held that a parolee's liberty interest is protected by the
7 Due Process Clause, even if "a statute allows the immigrant's arrest and detention and
8 does not provide for procedural protections." *Id.*: see also *Noori v. LaRose*, 2025 WL
9 2800149, at *10 (S.D. Cal. Oct. 1, 2025) (concluding that the habeas petitioner has a
10 protected liberty interest "even in his parole status").
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13 Here, Petitioner has a liberty interest protected by the Due Process Clause. That
14 the government allowed Petitioner to remain in the community for more than two years
15 on parole only strengthened this interest. See *Bd. of Pardons v. Allen*, 482 U.S. 369,
16 377-81 (1987) (recognizing that governmental action can create a liberty interest
17 protected by the Due Process Clause); *Johnson v. Williford*, 682 F.2d 868, 873 (9th
18 Cir. 1982) (same).
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22 This shows he was released long enough to "gain[] a foothold in the United
23 States" and "develop ties in this country," thereby changing his constitutional status
24 and affording him a right to due process. *Pablo Sequen v. Kaiser*, 800 F. Supp. 3d 998,
25 1009 (N.D. Cal. 2025) (citations and quote marks omitted).
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1 Just because petitioner may have a lesser liberty interest compared to others
2 does not mean that he has no liberty interest in his continued freedom. *Faqeri v. Scott*,
3 No. 2:26-cv-00003-JHC, 2026 U.S. Dist. LEXIS 14070 (WDWA January 26, 2026), at
4 *9 to *10. Accordingly, the first *Mathews* factor favors petitioner.
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6 **B. Second *Mathews* factor.**
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8 The second *Mathews* factor examines "the risk of an erroneous deprivation of
9 [the petitioner's private] interest through the procedures used, and the probable value,
10 if any, of additional or substitute procedural safeguards[.]" *Mathews*, 424 U.S. at 335.
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12 Here the I-213 (ECF 7-1) provides no information at all for the basis of the
13 revocation of the petitioner's release on bond. Under these circumstances, the chances
14 of erroneous deprivation of liberty are high. See *Valdez v. Joyce*, 2025 WL 1707737,
15 at *4 (S.D.N.Y. June 18, 2025) ("Petitioner's re-detention without any change in
16 circumstances or procedure establishes a high risk of erroneous deprivation of his
17 protected liberty interest.") see also *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d at 1323
18 (collecting cases). Thus, the second *Mathews* factor favors Petitioner.
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22 **C. Third *Mathews* factor.**
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24 The third *Mathews* factor contemplates "the Government's interest, including
25 the function involved and the fiscal and administrative burdens that the additional or
26 substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.
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1 Respondents provide no information at all regarding any government interest in
2 holding petitioner in custody. They provide no information as to why petitioner cannot
3 be relied upon to abide by the terms of his bond. Significantly, bond was revoked
4 before the order of removal was entered in this case. This establishes that the order of
5 removal was not the reason for bond revocation.
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8 **VI. Release is appropriate under *Zadvydas*.**

9 Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), once the ninety-day removal
10 period is complete, the government must show that the petitioner can be removed
11 within a reasonable time after the expiration of the period. *Id.*, at 699-700. In this case
12 it has not been a long time since the expiration of the removal period, a matter of one
13 week (April 6 to April 13, 2026).
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16 But here no information at all has been provided as to what actions, if any the
17 government has taken to effect the removal of the petitioner. There was a substantial
18 period of time (75 days), between January 8, 2026, when the BIA issued its order
19 dismissing the appeal, and March 24, 2026, when this petition for habeas corpus was
20 filed.
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23 If it is the case, as the respondents assert, that petitioner can be removed in the
24 ordinary course of business, the question arises as to why that could not have been
25 done earlier. The respondents have produced no evidence to this effect and there is no
26 reason to believe they will be able to do so. It would be a different matter perhaps if
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1 they did, but given the 75 days when a removal could have been effected and was not,
2 and with no legal or practical barrier having been identified in their return, the
3 petitioner's release on habeas corpus under the previous conditions of release should
4 be ordered by the court.
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6 **VI. Conclusion.**
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8 Because the *Mathews* factors favor petitioner, the court should conclude that
9 petitioner's re-detention without a hearing violates his constitutional right to due
10 process. As a result, he has proven by a preponderance of the evidence that he "is in
11 custody in violation of the Constitution, and a writ of habeas corpus should issue.
12

13 DATED this 13th day of April 2026
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15 /s/ Michael T. Purcell

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