

Chief Magistrate Judge Theresa L. Fricke

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

JEFERSSON CASTILLO SANCHEZ, *et al.*,

Petitioners,

v.

JULIO HERNANDEZ, *et al.*,

Respondents.

Case No. 2:26-cv-01003-TLF

FEDERAL RESPONDENTS'¹ RETURN

Noted for Consideration:
April 13, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains eight Petitioners at the Northwest ICE Processing Center ("NWIPC") pursuant to 8 U.S.C. § 1225(b). Petitioners, who were previously released from immigration detention, claim that their separate re-detentions violate procedural due process in that they assert that the government was required, and failed, to provide written notice and a pre-deprivation hearing before detention. *See* Pet., ¶¶ 139-142. This claim fails to look at each noncitizen's re-detention independently as procedural due process is flexible and should be individually suited to the circumstances at hand. While Federal

¹ Respondent Bruce Scott is not a federal employee and not represented by undersigned counsel.

1 Respondents do not concede that hearings were required for any of the re-detentions here, due
2 process does not mandate that all re-detentions require a pre-deprivation hearing. *See, e.g.,*
3 *Lucena-Ojeda v. Noem*, No. 2:26-cv-00085-BAT, 2026 WL 279353, at *3 (W.D. Wash. Feb. 3,
4 2026) (“the specific circumstances of redetention drive what process is due”); *Safi v. Noem*, No.
5 2:26-cv-00308-TLF, 2026 WL 445564, at *4 (W.D. Wash. Feb. 17, 2026) (finding that a prompt
6 post-deprivation hearing would be appropriate based on the individual facts of the case).

7 Petitioners further ask this Court to “permanently enjoin[] their re-detention during the
8 pendency of their removal proceeding[s] absent written notice and a hearing prior to re-detention
9 where Respondents must prove by clear and convincing evidence that each Petitioner is a flight
10 risk or danger to the community and that no alternatives to detention would mitigate those risks”
11 Pet., Prayer for Relief, ¶ 4. In addition, they seek a declaratory judgment that future re-detention
12 without these procedures during removal proceedings violates due process. *Id.*, ¶ 6. But even if
13 Petitioners were released from their current detention, this claim for relief would be based on
14 speculation of the circumstances of any future re-detention and certainly could not encompass
15 every circumstance leading to re-detention, for instance if a Petitioner committed a violent crime
16 or became subject to a removal order. Accordingly, this Court should deny Petitioners’ request
17 for permanent injunctive relief. *Torres v. Hermosillo*, No. 2:25-cv-02687-LK, 2026 WL 145715,
18 at *8 (W.D. Wash. Jan. 20, 2026). If this Court believes that a permanent injunction is appropriate
19 here, this Court should only enjoin Petitioners’ speculative future re-detention “without adequate
20 notice and an opportunity to be heard.” *Caisa Telenchana v. Hermosillo*, No. 2:26-CV-00363-
21 GJL, 2026 WL 696806, at *15 (W.D. Wash. Mar. 12, 2026).

22 For Petitioners’ factual backgrounds, Federal Respondents respectfully refer this Court to
23 the following declarations, submitted herewith:

Petitioner	Declarant	Exhibit ²
Jefersson Castillo Sanchez	DO Soraghan	A
Mamadou Diallo	DO Arambula	B
Mamudo Djalo	DO Arambula	C
Lilibeth Hernandez Alarcon	DO Benjamin	D
Vladimir Ivanov	DO Andron	E
Nelvin Serrano Rodriguez	DO Rodriguez	F
Jony Suarez Mora	DO Reed	G
Daniel Villaneuva Rios	DO Correa	H

II. LEGAL BACKGROUND

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.

² The Exhibit letters are solely for the purpose of referencing the declarations in this return. The declarations are not being filed as exhibits.

1 281, 287 (2018) (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for
2 applicants for admission until certain proceedings have concluded.”).

3 **B. Discretionary Release**

4 U.S. Department of Homeland Security (“DHS”) has discretionary release authority of
5 noncitizens detained under Section 1225(b) mandatory detention. The sole means of release from
6 detention pursuant to Section 1225(b) is temporary parole ‘for urgent humanitarian reasons or
7 significant public benefit,’ § 1182(d)(5)(A).” *Jennings v. Rodriguez*, 583 U.S. 281, 283 (2018).
8 Section 1182(d)(5)(A) provides the following:

9 The Secretary of Homeland Security may . . . in his discretion parole into the
10 United States temporarily under such conditions as he may prescribe only on a
11 case-by-case basis for urgent humanitarian reasons or significant public benefit
12 any alien applying for admission to the United States, but such parole of such alien
13 shall not be regarded as an admission of the alien and when the purposes of such
14 parole shall, in the opinion of the Secretary of Homeland Security, have been
15 served the alien shall forthwith return or be returned to the custody from which he
16 was paroled and thereafter his case shall continue to be dealt with in the same
17 manner as that of any other applicant for admission to the United States.

18 8 U.S.C. § 1182(d)(5)(A).

19 The implementing regulations provide two ways for parole to be terminated. First,
20 parole automatically terminates if the noncitizen departs from the United States or “at the
21 expiration of the time for which parole was authorized,” and “no written notice shall be
22 required” for automatic termination. 8 C.F.R. § 212.5(e)(1). Second, parole is terminated
23 when the purpose for which parole was authorized has been accomplished or an authorized
24 DHS official decides that “neither humanitarian reasons nor public benefit warrants the
continued presence of the alien in the United States.” 8 C.F.R. § 212.5(e)(2)(i). In these
circumstances, parole is terminated upon written notice to the noncitizen. Upon

1 termination of parole, the applicant reverts to the status that he or she had at the time of
2 parole. 8 C.F.R. § 212.5(e)(2)(i).

3 Following termination of parole, “any order of exclusion, deportation, or removal
4 previously entered shall be executed.” 8 C.F.R. § 212.5(e)(2)(i); *see also* 8 C.F.R. §
5 212.5(e)(1). “If the exclusion, deportation, or removal order cannot be executed within a
6 reasonable time, the [noncitizen] shall again be released on parole unless in the opinion
7 of [an authorized DHS official] the public interest requires that the [noncitizen] be
8 continued in custody.” 8 C.F.R. § 212.5(e)(2)(i).

9 Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision
10 on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under Section
11 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release
12 him on bond, or release him on conditional parole.³ By regulation, immigration officers can
13 release a noncitizen if he demonstrates that he “would not pose a danger to property or persons”
14 and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). This discretionary
15 release is done with the issuance of an order of release on recognizance (“OREC”) issued by
16 DHS.

17 A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an
18 immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a);
19 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration
20 judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. §
21 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether
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23 ³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States
24 under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding
that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment
of status under § 1255(a)).

1 to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine
2 factors for immigration judges to consider).

3 However, the release of a noncitizen on OREC prior to July 2025 should not determine
4 whether that person's detention authority is currently governed by Section 1225(b) or Section
5 1226(a). On July 8, 2025, DHS issued a memorandum to ICE employees explaining that DHS
6 had revisited its legal position on detention and release authorities. *Rodriguez v. Bostock*, 802 F.
7 Supp. 3d 1297, 1308 (W.D. Wash. 2025). The memorandum defined an "applicant for admission"
8 as "an alien present in the United States who has not been admitted or who arrives in the United
9 States, whether or not at a designated port of arrival. *Id.* (citing 8 U.S.C. § 1225(a)(1)). Prior to
10 July 2025, DHS allowed discretionary releases of aliens that fit the definition of an applicant for
11 admission pursuant to 8 C.F.R. § 1236.1(c)(8), instead of only utilizing parole. But the
12 memorandum clarified, "Effective immediately, it is the position of DHS that such aliens are
13 subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody except
14 by [8 U.S.C. § 1182(d)(5)]." *Rodriguez*, 802 F. Supp. 3d at 1308.

15 Accordingly, DHS's prior practice of OREC releases for applicants for admission does
16 not mean that those aliens are no longer applicants for admissions. *Buenrostro-Mendez*, 2026
17 WL 323330, at *8 ("While that is true, the government's past practice has little to do with the
18 statute's text. The text says what it says, regardless of the decisions of prior Administrations.
19 Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's
20 plain text."); *Avila*, 2026 WL 819258, at *5 ("[N]either *Jennings* nor the Government's history of
21 enforcing § 1225 confines the Government's authority to detain aliens under § 1225(b)(2)(A) to
22 the border.").

III. PROCEDURAL DUE PROCESS

Petitioners assert that their re-detention violates due process because they did not receive written notice and a hearing prior to being detained. Pet., ¶¶ 139-142. However, there are no such standard requirements. Instead, “[d]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). To analyze procedural due process, *Mathews* calls for an analysis of (1) “the private interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

The sole issue in this litigation is whether Petitioners’ re-detentions were consistent with procedural due process. Petitioners Serrano-Rodriguez and Suarez-Mora were released from immigration detention pursuant to 8 U.S.C. § 1182(d)(5). Exs. F, G. Petitioners Castillo Sanchez, Diallo, Djalo, Hernandez-Alarcon, and Ivanov were released from immigration detention on ORECs. Exs. A-E. It is unclear from the records what release authority governed Petitioner Villaneuva Rios’s release.⁴ Ex. H. Federal Respondents agree that no Petitioner received a pre-deprivation hearing prior to their release being revoked.

When applying the *Mathews* analysis, this Court has found that petitioners with similar facts as Petitioners Castillo Sanchez, Diallo, Djalo, Hernandez Alarcon, Serrano Rodriguez, Suarez Mora, and Villaneuva Rios (assuming his release was on an OREC), were entitled to pre-deprivation hearings. *Reyes v. Hermosillo*, No. 2:26-CV-00270-TLF, 2026 WL 507678, at *4 (W.D. Wash. Feb. 24, 2026) (analyzing Petitioners Nunez and Ponce).

⁴ The Correa Declaration states that Petitioner was released on parole. Ex. H, ¶ 6. However, the notice cancelling his release refers to an OREC (Form I-220A). The Petition does not identify whether he was released on OREC or paroled. Pet., ¶ 104.

1 In the same decision, this Court found that one Petitioner (Bealter) was entitled to a post-
2 deprivation hearing rather than a pre-deprivation hearing because she had been arrested and
3 charged with a criminal offense after her initial release. *Id.*, at *4-5. The Court stated that the
4 arrest and pending charges for a crime potentially constituted a change in material circumstances
5 after her release. *Id.*, at *5. Under those circumstances, the Court held that a prompt post-
6 deprivation hearing would be consistent with due process. *Id.* Here, Petitioner Ivanov was
7 convicted of a crime after his initial release. Ex. E, ¶ 6; Pet., ¶¶ 71-72. At most, this Court should
8 order that the government provide him with a prompt post-deprivation hearing.

9 Federal Respondents recognize that if this Court were to apply the same reasoning as
10 stated in *Reyes*, this Court will likely find all Petitioners' re-detentions, except for Petitioner
11 Ivanov, required notice and pre-deprivation hearings to comport with procedural due process. For
12 the reasons stated in the briefing in *Reyes*, Federal Respondents respectfully disagree.

13 Thus, while Federal Respondents do not consent to issuance of the writ and reserve all
14 rights, including the right to appeal, and to conserve judicial and party resources while expediting
15 the Court's consideration of this case, the government hereby relies upon, and incorporates by
16 reference, the legal arguments it presented in *Reyes*, and the Court can decide these issues without
17 further briefing in regard to Petitioners.

18 IV. CONCLUSION

19 ICE lawfully re-detained Petitioners. For the foregoing reasons, Federal Respondents
20 respectfully request that this Court deny Petitioners' requests for release and deny the Petition.

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1 DATED this 8th day of April, 2026.

2 Respectfully submitted,

3 s/ Michelle R. Lambert

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14 *I certify that this memorandum contains 2,160*
15 *words, in compliance with the Local Civil Rules.*