

District Judge Lauren King

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

A.M.P.,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-01087-LK

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
April 20, 2026

I. INTRODUCTION

This Court should deny Petitioner's Petition for a Writ of Habeas Corpus. Dkt. No. 1. Petitioner, a native and citizen of Mexico, is lawfully detained pending completion of removal proceedings. Petitioner entered the United States without inspection on an unknown date in 1986 and has a significant criminal history, including two recent convictions for aggravated harassment. His lawful re-detention on March 27, 2026, is governed by mandatory detention under 8 U.S.C. § 1225(b). This detention does not violate the Fifth Amendment's Due Process Clause. The Petition,

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo.

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

1 which seeks immediate release should be denied in its entirety. Removal will be to Mexico, his
2 country of citizenship; no third-country removal is planned.

3 II. FACTUAL AND PROCEDURAL HISTORY

4 A. Detention Authority

5 Petitioner's detention is authorized and required by 8 U.S.C. § 1225(b), which states that
6 "in the case of an alien who is an applicant for admission, if the examining immigration officer
7 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
8 admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. §
9 1225(b)(2)(A). Because Petitioner entered without inspection and has never been admitted or
10 paroled, he remains an "applicant for admission" under the plain statutory definition in 8 U.S.C. §
11 1225(a)(1): "An alien present in the United States who has not been admitted or who arrives in the
12 United States . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C.
13 § 1225(a)(1); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). The statute mandates
14 detention for the duration of removal proceedings under 8 U.S.C. § 1229a unless the alien
15 demonstrates he is "clearly and beyond a doubt entitled to be admitted," a showing Petitioner has
16 never made. Detention under 8 U.S.C. § 1225(b)(2)(A) continues until proceedings conclude,
17 including through any appeal. *See* 8 U.S.C. § 1225(b)(2)(C) (detention continues "until a final
18 determination of admissibility" or removal).

19 The Supreme Court has confirmed that 8 U.S.C. § 1225(b) imposes mandatory detention
20 without bond hearings for applicants for admission throughout removal proceedings. *Jennings v.*
21 *Rodriguez*, 583 U.S. 281, 298–300 (2018) (holding that sections 1225(b)(1) and (b)(2) "mandate
22 detention" of certain aliens "until the completion of removal proceedings" and contain "no
23 provision for bond hearings"). The Court distinguished 8 U.S.C. § 1225(b) detention (applicable
24

1 to aliens “seeking admission”) from discretionary detention under 8 U.S.C. § 1226(a) (applicable
2 to certain “aliens already in the country”). *Id.* at 288.

3 The Fifth Circuit recently addressed the precise issue presented here of whether an alien
4 who entered without inspection years earlier and was later arrested in the interior remains subject
5 to mandatory detention under 8 U.S.C. § 1225(b). In a thorough textual analysis, the court held
6 that such aliens are “deemed . . . applicants for admission” under 8 U.S.C. § 1225(a)(1) and are
7 “presently seeking admission” while removal proceedings remain pending. *Buenrostro-Mendez v.*
8 *Bondi*, 166 F.4th 494, 502 (5th Cir. 2026). The court explained that “being an ‘applicant for
9 admission’ is not a condition independent from ‘seeking admission,’” and that “when a person
10 applies for something, they are necessarily seeking it.” *Id.* at 503.

11 The Eighth Circuit reached the same conclusion. *Avila v. Bondi*, 25-3248, 2026 WL
12 819258, at *3-4 (8th Cir. Mar. 25, 2026) (rejecting narrow construction of “seeking admission”
13 and affirming mandatory detention under 8 U.S.C. § 1225(b)(2)(A) for an alien present without
14 admission).

15 This Court should find the Fifth and Eighth’s Circuits’ persuasive reasoning highly
16 instructive, as it rests on the plain text of the statute and harmonizes with *Jennings*.

17 1. Order of Release on Recognizance

18 An Order of Release on Recognizance (OREC, Form I-220A) permits the discretionary
19 release of certain aliens in immigration proceedings to be freed without a monetary bond, subject
20 to conditions such as period reporting and compliance with immigration requirements. Revocation
21 is permitted at any time in agency discretion, without a specific violation required, leading to re-
22 detention. *See* 8 C.F.R. 236.1(c)(9).

23 Courts in this District have scrutinized such revocations for due process violations. *See*
24 *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025). In *E.A. T.-B.*, the court

1 held that OREC creates a conditional liberty interest requiring some process before revocation.
2 *See Id.* Here, Petitioner was provided with notice in the Form G-56 to report to ERO so that OREC
3 documentation could be served. A custody redetermination was made and OREC revocation, was
4 served. Van Daley Decl., Exhibits 5-6.

5 **B. Petitioner A.M.P.**

6 Petitioner is a native and citizen of Mexico who first came to the attention of immigration
7 officers on October 24, 2014, following an arrest for driving under the influence in Multnomah
8 County, Oregon. Declaration of Deportation Officer Freite Subero Arias (Arias Decl.) ¶¶ 4-5.
9 During processing, Petitioner admitted entering the United States without inspection on an
10 unknown date in 1986 at or near San Ysidro, California. Arias Decl., ¶ 5. An immigration detainer
11 was lodged against him, though initially rejected by the Multnomah County Jail. *Id.* On December
12 2, 2014, immigration officers located and detained Petitioner without incident. Arias Decl., ¶ 6.
13 Petitioner was transported to the Enforcement and Removal Operations (“ERO”) office in
14 Portland, Oregon, for processing and served with a Notice to Appear charging him as inadmissible
15 under 8 U.S.C. § 1182(a)(6)(A)(i). Arias Decl., ¶ 7. That same day, Petitioner was released on an
16 Order of Release on Recognizance (“OREC”). Arias Decl., ¶ 8; Declaration of Lawrence Van
17 Daley (Van Daley Decl.) Exhibit (Ex.) 1, OREC.

18 Petitioner’s criminal history spans decades and reflects a repeated pattern of conduct that
19 endangers the community. His record includes the following arrests and convictions: on July 1,
20 1995, arrest in Multnomah County, Oregon, for assault in the fourth degree; on October 16, 1996,
21 arrest in Multnomah County for violation of ORS 166.450 (obliteration or change of identification
22 number on a firearm); on May 24, 1998, arrest in Multnomah County for assault in the fourth
23 degree (domestic abuse) and harassment; on December 7, 1998, arrest in Multnomah County for
24 assault in the fourth degree (domestic abuse) and harassing communications, resulting in

1 conviction of a lesser offense on December 31, 1998; on April 14, 2008, conviction in Multnomah
2 County for DUI; on October 2, 2014, arrest for DUI in Multnomah County; on February 5, 2016,
3 arrest for DUI in Multnomah County; on June 7, 2017, charge for harassment under ORS 166.065
4 (dismissed August 3, 2017); on October 17, 2019, charges in Multnomah County for assault in the
5 fourth degree under ORS 166.065, harassment under ORS 166.065, and menacing under ORS
6 163.190 (dismissed November 8, 2019); on May 10, 2021, arrest in Multnomah County for
7 strangulation under ORS 163.187, attempt to commit a crime under ORS 161.405, unlawful use
8 of weapon under ORS 166.220, assault in the fourth degree under ORS 163.160, and menacing
9 under ORS 163.190; on February 18, 2025, arrest in Multnomah County for criminal mischief in
10 the second degree under ORS 164.354, resisting arrest under ORS 162.315, two counts of
11 aggravated harassment under ORS 166.070, and disorderly conduct in the second degree under
12 ORS 166.025; and, most recently, conviction on September 4, 2025, in Clackamas County Circuit
13 Court of two counts of aggravated harassment under ORS 166.070. Arias Decl., ¶ 28.

14 This history of non-compliance extends to his immigration proceedings. On July 22, 2015,
15 Petitioner failed to appear in immigration court due to local criminal custody on a DUI arrest.
16 Arias Decl., ¶ 9. On November 25, 2015, the Immigration Judge sustained the charge of
17 removability. Arias Decl., ¶ 10. On February 2, 2015, Petitioner failed to report to ERO as required
18 by his OREC. Arias Decl., ¶ 11. On May 4, 2016, Petitioner again failed to appear at an
19 immigration court hearing and was ordered removed in absentia. Arias Decl., ¶ 6; Van Daley Decl.,
20 Ex. 2, In Absentia Order. On May 23, 2016, he filed a motion to reopen; ERO arrested him on
21 May 26, 2016, but released him upon discovery of the pending motion. Arias Decl., ¶¶ 14-15. The
22 Department of Homeland Security (“DHS”) did not oppose the motion, which was granted on
23 May 27, 2016. Arias Decl., ¶ 16.

More recently, on January 2, 2026, Petitioner filed a motion to terminate immigration proceedings; DHS opposed the motion on January 26, 2026, and the motion was denied on February 2, 2026. Arias Decl., ¶¶ 22-23; Van Daley Decl., Ex. 4, Motion Denial. On March 2, 2026, Petitioner received a G-56 call-in letter instructing him to report to ERO in Portland, Oregon, to discuss the status of his case and to serve OREC documentation. Arias Decl., ¶ 24; Van Daley Decl., Ex. 5, Form G-56. Petitioner reported on March 27, 2026. Arias Decl., ¶ 25. A custody redetermination was conducted based on his recent aggravated-harassment convictions. *Id.*; Van Daley Decl., Ex. 3, Form I-213. The Assistant Field Office Director revoked the prior OREC and took Petitioner into custody. Arias Decl., ¶ 26; Van Daley Decl., Ex. 6, OREC Revocation. On March 30, 2026, an I-830 was filed to transfer the case to the Tacoma Immigration Court; transfer remains pending. Arias Decl., ¶ 27. Petitioner has filed no applications likely to result in third-country removal; ERO will seek removal to Mexico. Arias Decl., ¶ 29.

III. LEGAL AUTHORITY

This Court has jurisdiction to entertain the Petition under the federal habeas statute, 28 U.S.C. § 2241(a) and (c)(3), which authorizes review of claims that an alien is “in custody in violation of the Constitution or laws or treaties of the United States.” *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). However, the Petition fails on the merits. Petitioners’ detention is lawful, and his claim of constitutional violations is without merit.

IV. ARGUMENTS

A. Petitioner’s Detention Does Not Violate the Fifth Amendment Due Process Clause

The Immigration and Nationality Act (“INA”) unambiguously classifies Petitioner as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The statute defines an “applicant for admission” in broad terms: “An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port

1 of arrival and including an alien who is brought to the United States after having been interdicted
2 in international or United States waters) shall be deemed for purposes of this chapter an applicant
3 for admission.” 8 U.S.C. § 1225(a)(1).

4 If, during inspection, “the examining immigration officer determines that an alien seeking
5 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for
6 a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). This language is
7 mandatory and contains no provision for bond hearings or discretionary release except through
8 parole under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 289.

9 Section 1225(b) mandates detention for inadmissible aliens like Petitioner, who entered
10 without inspection and is charged under 8 U.S.C. § 1182(a)(6)(A)(i). *See* 8 U.S.C. § 1225(b)(2)(A)
11 (requiring detention for applicants for admission not clearly entitled to entry pending 8 U.S.C. §
12 1229a proceedings). Unlike 8 U.S.C. § 1226(a), which provides discretionary detention and bond
13 eligibility for certain aliens in removal proceedings, 8 U.S.C. § 1225(b) imposes mandatory
14 detention without a statutory right to bond. *Jennings*, 583 U.S. at 293-94; *see also Dep't of*
15 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 115 (2020).

16 Recent decisions in this District have found that long-term residents who entered without
17 inspection are not detained pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b),
18 but are instead entitled to discretionary custody review under 8 U.S.C. § 1226(a). *See e.g., Balwan*
19 *v. Bondi*, No. 2:2026-cv-00248-LK, 2026 WL 497098, at *4–5 (W.D. Wash. Feb. 23, 2026);
20 *Sanchez Henao v. Hernandez*, 2:26-cv-00707-LK, 2026 WL 905035 (W.D. Wash. Apr. 2, 2026).
21 Respondents maintain that 8 U.S.C. § 1225(b)(2)(A) governs here.

22 Even if the Court were to assess the Petitioner’s detention under 8 U.S.C. § 1226(a),
23 detention remains fully lawful. Section 1226(a) authorizes the Attorney General to “arrest and
24 detain an alien pending a decision on whether the alien is to be removed from the United States.”

1 8 U.S.C. § 1226(a). The statute further provides that the Attorney General “may release the alien
2 on bond ... or conditional parole” but expressly permits revocation of such release: “The Attorney
3 General at any time may revoke a bond authorized by this section or parole authorized by section
4 1182(d)(5) of this title at any time” and “may rearrest the alien under the original warrant and
5 again detain the alien.” 8 U.S.C. § 1226(b). Here, the Assistant Field Office Director properly
6 exercised this statutory authority on March 27, 2026, when Petitioner reported pursuant to the
7 G-56 call-in letter. Following a custody redetermination by ERO officers that considered
8 Petitioner’s recent aggravated-harassment convictions and his overall criminal and immigration
9 history, the prior OREC was revoked and Petitioner was taken into custody. This revocation was
10 expressly authorized by the plain text of 8 U.S.C. § 1226(b) and was consistent with the
11 government’s prior treatment of Petitioner as subject to discretionary processes through years of
12 OREC supervision.

13 While Petitioner fails to articulate any test to support his assertion that his detention
14 violates the Fifth Amendment, this Court evaluates procedural due-process challenges to
15 immigration detention using the three-factor balancing test set forth in *Mathews v. Eldridge*, 424
16 U.S. 319, 335 (1976). *See Balwan v. Bondi*, 2026 WL 497098, at *3–4 (W.D. Wash. Feb. 23, 2026)
17 (applying *Mathews* to re-detention and custody-review claims); *see also Fuenmayor Rodriguez v.*
18 *Noem*, 2:26-cv-00673-LK, 2026 WL 799363, at *6 (W.D. Wash. Mar. 23, 2026). The *Mathews*
19 test requires consideration of: (1) the private interest affected by the official action; (2) the risk of
20 erroneous deprivation through the procedures used and the probable value of additional
21 safeguards; and (3) the Government’s interest, including the burdens of additional procedures.
22 *Mathews*, 424 U.S. at 335.

23 Applying these factors here confirms that no due-process violation has occurred. First,
24 while Petitioner has a liberty interest in freedom from physical restraint, that interest is

1 significantly diminished in the immigration context. Petitioner is a removable alien who has never
2 been lawfully admitted; his detention serves the purely civil purpose of ensuring his presence at
3 removal proceedings and protecting the community, not punishment. *Demore v. Kim*, 538 U.S.
4 510, 526 (2003) (“[T]he Government may constitutionally detain deportable aliens during the
5 limited period necessary for their removal proceedings.”).

6 Second, the risk of erroneous deprivation is low, and additional procedures would add little
7 value. On March 27, 2026, the same day Petitioner reported in response to the G-56 call-in letter,
8 ERO conducted a prompt, custody redetermination that considered his September 4, 2025,
9 aggravated-harassment convictions and his broader criminal and immigration history. This process
10 provided meaningful notice and opportunity to be heard appropriate to the circumstances. *See*
11 *Mathews*, 424 U.S. at 333 (due process requires an opportunity to be heard “at a meaningful time
12 and in a meaningful manner”). A full bond hearing before an immigration judge would offer only
13 marginal additional protection given the clear evidentiary record and the brief overall duration of
14 current detention.

15 Third, the Government’s interests are compelling and outweigh any marginal benefit from
16 extra process. The Government has strong interests in preventing flight and safeguarding the
17 community from danger - interests heightened by Petitioner’s decades-long pattern of criminal
18 conduct, including assaults, domestic-abuse-related offenses, multiple DUIs, weapon-related
19 charges, strangulation allegations, and the recent aggravated-harassment convictions. Requiring
20 additional layers of process in every re-detention scenario would impose significant administrative
21 burdens without materially reducing error risk. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189,
22 1206–07 (9th Cir. 2022) (accounting for heightened governmental interest in immigration
23 detention).

24

1 Petitioner's detention began on March 27, 2026, less than one month as of the filing of this
2 response. This brief duration weighs heavily against any claim of unreasonableness. Any claim of
3 prolonged detention is premature given the short period at issue and the availability of
4 administrative processes. The pathway to lawful permanent residence referenced in Dkt. No. 1,
5 ¶ 20, appears to be reference to a Form I-130 (Petition for Alien Relative), which was filed by
6 Petitioner's over-21 U.S. citizen daughter and approved on September 15, 2023. Approval of
7 Form I-130 does not grant lawful permanent resident status, nor does it automatically entitle
8 Petitioner to adjustment of status, rather it merely establishes the qualifying family relationship
9 and opens the door for filing a Form I-485 (Application to Register Permanent Residence or Adjust
10 Status). There has been no approval of Petitioner's Form I-485; however, even if the I-485 were
11 approved in the future, the granting of adjustment of status is a discretionary determination by U.S.
12 Citizenship and Immigration Services ("USCIS") or the Immigration Judge. The existence of the
13 approved I-130 and pending I-485 applications therefore does not create a constitutional liberty
14 interest mandating release from detention while removal proceedings remain ongoing. *See*
15 *Jennings*, 583 U.S. at 305. Petitioner's criminal convictions may render him ineligible for, or
16 unworthy of, such relief in the exercise of discretion. *See e.g. Ramirez v. Dougherty*, 23 F. Supp.
17 3d 1322, 1327 (W.D. Wash. 2014) (describing the filing of Form I-130 by a U.S. citizen spouse
18 and the concurrent or subsequent filing of Form I-485 to adjust status under 8 U.S.C. § 1255(a),
19 along with USCIS's approval of the petition and denial of adjustment based on the beneficiary's
20 prior entry without inspection).

21 Petitioner's detention is statutorily authorized, the March 27, 2026, custody
22 redetermination satisfies the *Mathews* balancing test, and continued detention is substantively
23 reasonable under controlling precedent. His Fifth Amendment claim fails.

Should the Court nevertheless determine that Petitioner's current detention violates due process, the appropriate remedy would not be immediate release from custody. Instead, the proper relief would be a narrowly tailored order directing that Petitioner receive a bond hearing before an immigration judge in accordance with the discretionary framework of 8 U.S.C. § 1226(a). *See Balwan*, 2026 WL 497098, at *5–6 (granting habeas relief limited to ordering a 8 U.S.C. § 1226(a) bond hearing where the court found the existing custody review insufficient); *Sanchez Henao*, 2026 WL 905035, at *5. At such a hearing, the Immigration Judge could fully consider Petitioner's criminal history, flight risk, and danger to the community, as well as any equities presented by his pending applications, and impose appropriate conditions of release if warranted. Immediate release without a bond hearing would be overbroad and inconsistent with the limited scope of habeas relief in the immigration detention context.

B. Petitioner's Claim That Third-Country Removal Would Violate Due Process Is Meritless and Unripe

Petitioner's second claim lacks merit. Immigration and Customs' Enforcement intends to seek removal to Mexico, Petitioner's country of citizenship. Petitioner has filed no applications that would trigger consideration of third-country removal, and no such removal is planned, scheduled, or imminent. The claim therefore presents no concrete controversy ripe for adjudication. *See Kumar v. Wamsley*, No. 2:25-cv-02055-KKE, 2025 WL 3204724, at *4–5 (W.D. Wash. Nov. 17, 2025) (granting relief only where third-country removal was actually scheduled without adequate notice; distinguishing cases with no such plan). In removal to the country of citizenship, Petitioner will receive all required statutory and constitutional protections, including notice and opportunity to present any fear-based claims before an immigration judge. No Fifth Amendment violation arises on these facts.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus in its entirety.

DATED this 14th day of April, 2026.

Respectfully submitted,

s/ Lawrence Van Daley

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I certify that this memorandum contains 3,230 words, in compliance with the Local Civil Rules.