District Judge Ricardo S. Martinez
Magistrate Judge Grady J. Leupold

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

GINY FRANCOIS, HECTOR MOISES DAVILA ZURITA, JEAN CARLOS PINTO BAUTISTA,

Petitioners,

v.

LAURA HERMOSILLO,[1] *et al.*,

Respondents.

Case No. 2:25-cv-02122-RSM-GJL

FEDERAL RESPONDENTS'[2] RETURN

Noted for Consideration:
November 21, 2025

I. INTRODUCTION

Noncitizens apprehended at the border and placed in removal proceedings under 8 U.S.C. § 1225(b)(1) "shall be detained" for the duration of those proceedings. Despite this command, U.S. Immigration and Customs Enforcement (ICE) exercised its discretion to grant Petitioners parole into the United States during their removal proceedings. Once Francois's removal proceedings

[1] Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Field Office Director Laura Hermosillo for Seattle ICE ERO Field Office Director Cammilla Wamsley.

[2] Respondent Bruce Scott is not a Federal Respondent.

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were terminated, his parole was revoked and he was taken into custody for expedited removal. He is lawfully detained while his asylum claim is pending. Zurita and Bautista's parole was revoked because they violated the terms of their parole. They are lawfully detained while their asylum claims are pending. Petitioners' habeas petition should be denied. Congress has mandated detention under 8 U.S.C. § 1225(b) and denied notice for parole revocation, expressly foreclosing Petitioners' claim that they are entitled to a hearing where the government must prove that they are a flight risk or a danger before their parole is revoked.

II. BACKGROUND

A. 8 U.S.C. § 1225(b)

Petitioners are applicants for admission who are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *See Matter of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025). Applicants for admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by the Attorney General in her discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings*, 583 U.S. at 283.

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B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A)

While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory detention, they may be subject to parole by the Attorney General or Department of Homeland Security (DHS), and that is not an issue that the Immigration Judge has authority to consider. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a) (2025) (designating who may exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney General may grant aliens detained under Section 235(b)(1) temporary parole into the United States "for urgent humanitarian reasons or significant public benefit" (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)). This discretionary parole is statutorily required to be "temporary parole" under 8 U.S.C. § 1182(d)(5)(A), and the statute does not grant the Attorney General or DHS the discretion to grant indefinite parole to those subject to mandatory detention.

C. Petitioner Giny Francois

On August 7, 2024, Francois, a native and citizen of Haiti, arrived the Hidalgo, Texas Port of Entry and applied for admission into the United States without documents sufficient for lawful entry into the United States. *See* Declaration of Deportation Officer Enrique Rodriguez (Rodriguez Decl.) at ¶ 4. Francois was paroled into the United States and issued a Notice to Appear (NTA) alleging that he is not a citizen or national of the United States, is a native and citizen of Haiti who applied for admission into the United States at the Hidalgo, Texas Port of Entry on August 7, 2024, and is an immigrant not in possession of a valid unexpired visa, reentry permit, border crossing card, or other valid entry document required by the INA, and charging him with removability under INA § 212(a)(7)(A)(i)(l); 8 U.S.C. 1182(a)(7)(A)(i)(l). *Id.*

On May 28, 2025, at a master calendar hearing before an immigration judge, DHS moved to dismiss Francois's proceedings without prejudice. *Id.* at ¶ 5. The immigration judge granted

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DHS's motion and Francois's parole was revoked and he was taken into custody. *Id.* at ¶ 6. Francois was served with a Form 1-860, Notice and Order of Expedited Removal. *Id.* Francois claimed fear of returning to Haiti and DHS referred him to United States Citizenship and Immigration Services (USCIS) for a credible fear interview. *Id.* at ¶ 7. On June 26, 2025, Francois filed an appeal of the immigration judge's decision granting dismissal of his removal proceedings. *Id.* at ¶ 8.

DHS released Francois from custody pursuant to this Court's temporary restraining order on November 3, 2025. *Id.* at ¶ 9.

D. Petitioner Hector Moises Davila Zurita

On September 7, 2023, Zurita, a native and citizen of Venezuela, entered the United States near McAllen, Texas, without admission or parole and was apprehended by DHS upon arrival to the United States at or near the border. Rodriguez Decl. at ¶ 10. Zurita was served with a Form I-860, Notice and Order of Expedited Removal. *Id.* at ¶ 11. Zurita claimed fear of returning to Venezuela and DHS referred him to USCIS for a credible fear interview. *Id.* at ¶ 12.

On October 11, 2023, USCIS made a positive credible fear finding. *Id.* at ¶ 13. The same day, Zurita was issued an NTA alleging that he is not a citizen or national of the United States, and is a native and citizen of Venezuela who entered the United States on or about September 7, 2023, without admission or parole and who did not possess or present a valid immigrant visa, reentry permit, border crossing identification care, or other valid entry document, and charging him with inadmissibility under INA §§ 212(a)(7)(A)(i)(I) and 212(a)(6)(A)(i); 8 US.C. §§ ll82(a)(7)(A)(i)(I) and 1182 (a)(6)(A)(i). *Id.* at ¶ 14.

Zurita was released on parole while his asylum claim was pending, on October 18, 2023. *Id.* at ¶ 15. On December 5, 2024, Zurita reported to DHS that he had been pulled over by Tieton

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Police Department three days earlier. *Id.* at ¶ 16. This was a violation of his parole because Zurita was required to immediately report any police contact. *Id.* Zurita violated another condition of his parole on June 17, 2025, by failing to report to DHS. *Id.* at ¶ 17.

Zurita's parole was revoked by DHS on September 17, 2025, for violating a condition of his release and DHS took Zurita into custody. *Id.* at ¶ 18. On November 3, 2025, this Court ordered DHS to immediately return Zurita to the Western District of Washington and immediately release him from detention on the conditions of release in place prior to his arrest. *Id.* at ¶ 19. DHS transferred Zurita back to the NWIPC and released him on November 8, 2025. *Id.* at ¶ 20.

E. Petitioner Jean Carlos Pinto Bautista

On August 24, 2024, Bautista, a native and citizen of Venezuela, arrived at the Brownsville, Texas Port of Entry and applied for admission into the United States without documents sufficient for lawful entry into the United States. Rodriguez Decl. at ¶ 21. Bautista was paroled into the United States and issued an NTA alleging that he is not a citizen or national of the United States, is a native and citizen of Venezuela who applied for admission into the United States at the Brownsville, Texas Port of Entry on or about August 24, 2024, and is an immigrant not in possession of a valid unexpired visa, reentry permit, border crossing card, or other valid entry document required by the INA, and charging Bautista with removability under INA § 212(a)(7)(A)(i)(I); 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*

On September 4, 2024, DHS sent Bautista a Form G-56, Call-in Letter, to his last known address, ordering him to report to the Yakima ICE office on October 10, 2024. *Id.* at ¶ 22. Bautista failed to report to ICE as ordered. *Id.* at ¶ 23. Bautista reported to the Yakima ICE office on August 25, 2025, and was instructed to report to the Intensive Supervision Appearance Program

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(ISAP) office to enroll in SmartLink.[3] *Id.* at ¶ 24. Bautista failed to report to the ISAP office as instructed. *Id.* at ¶ 25.

DHS revoked Bautista's release on October 12, 2025, for failure to comply with the conditions of his parole and took him into custody. *Id.* at ¶ 26. This Court ordered DHS to immediately return Bautista to the Western District of Washington and immediately release him from detention on the conditions of release in place prior to his arrest. *Id.* at ¶ 28. DHS transferred Bautista back to the NWIPC and released him on November 8, 2025. *Id.* at ¶ 29.

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts the authority to grant habeas relief "within their respective jurisdictions."

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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[3] ISAP is Alternatives to Detention (ATD) ICE program that monitors certain immigrants using electronic monitoring devices, check-ins, and a mobile app called SmartLINK to ensure compliance with immigration obligations, such as attending court hearings. *See* ICE's website at ice.gov, U.S. Immigration and Customs Enforcement Memorandum to Field Office Directors dated May 11, 2005, *available at*: https://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf.

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IV. ARGUMENT

A. ICE lawfully detained Petitioners pursuant to 8 U.S.C. § 1225(b).

Congress enacted a multi-layered statutory scheme that provides for the civil detention of noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id*. at 1057.

Aliens who are apprehended shortly after illegally crossing the border and who are determined to be inadmissible due to lacking a visa or valid entry documentation, 8 U.S.C. § 1182(a)(7)(A), may be removed pursuant to an expedited removal order unless they express an intention to apply for asylum or a fear of persecution in their home country. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). "The purpose of these provisions is to expedite the removal from the United States of aliens who indisputably have no authorization to be admitted to the United States, while providing an opportunity for such an alien who claims asylum to have the merits of his or her claim promptly assessed by officers with full professional training in adjudicating asylum claims." H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209 (1996).

Applicants for admission fall into one of two categories. Section 1225(b)(1) covers aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by the Attorney General in her discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings*, 583 U.S. at 287.

Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means

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of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings*, 583 U.S. at 283.

Petitioners' detention under Section 1225(b) without a pre-detention hearing was lawful. The fact that Petitioners had initially been released by ICE on conditional parole does not change this fact. There is no statutory or regulatory requirement that a noncitizen be provided with a pre-detention hearing before re-detention. ICE's authority to re-arrest is not limited to circumstances where a material change in circumstances has occurred. The facts here are simple: Petitioners were subject to mandatory detention, Petitioners were granted discretionary parole, Francois's removal proceedings were terminated, and he was processed for expedited removal, Zurita and Bautista violated the conditions of their parole, and ICE re-detained them.

Further, several provisions at 8 U.S.C. § 1252 preclude review. First, 8 U.S.C. § 1252(g) bars review of Petitioners' claims because they arise from the government's decision to commence removal proceedings. Second, 8 U.S.C. § 1252(b)(9) bars the Court from hearing Petitioners' claims because their claims challenge the decision and action to detain them, which arises from the government's decision to commence removal proceedings, thus an "action taken . . . to remove an alien from the United States." Third and lastly, 8 U.S.C. § 1252(e)(3) applies and limits "[j]udicial review of determinations under Section 1225(b) of this title and its implementation." The plain language of the statute precludes judicial review for aliens determined to be detained pursuant to Section 1225(b)(2) and applies to a "determination under section 1225(b)" and to its implementation.

B. Petitioners' detention comports with due process.

Petitioners' detention does not violate their substantive and procedural due process rights. Petitioners inaccurately argue that the standard for parole under 8 C.F.R. § 212.5(b) is that they

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are a flight risk or danger to the community. Instead, the default for mandatory detainees is no release. However, the Attorney General may provide parole only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit." 8 C.F.R. § 212.5(b).

1. Substantive Due Process

ICE has a legitimate interest in Petitioners' detention. For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings,* 583 U.S. at 283.

Petitioners' detention here under Section 1225(b) without a pre-detention hearing was lawful. The fact that ICE made an initial determination that Petitioners could be released on parole

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does not prevent ICE from later revoking that parole, especially where they violated the conditions of their parole. ICE has the clear discretionary authority to revoke conditional parole. 8 C.F.R. § 236.1(c)(9). ICE made an individual determination to revoke Petitioners' parole because Francois's removal proceedings were terminated and he was processed for expedited removal, and because Zurita and Bautista violated the conditions of their parole. Thus, ICE had a legitimate, non-punitive interest in their detention.

2. Procedural Due Process

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioners' detention is consistent with their due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (internal quotation marks omitted). This 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.

a. Liberty Interest.

The Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioners' interest in their liberty *generally* does not mean that they possess a separate or heightened liberty interest in the continuation of their conditional release. Moreover, Petitioners do not have a liberty interest in participating in parole.

"The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules

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as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz*, 53 F.4th at 1206 (quoting *Demore*, 538 U.S. at 522). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523.

Petitioners' release was always subject to conditions of release, and they knew that they could be re-detained if they violated the conditions of parole. Accordingly, Petitioners cannot claim that the government promised them ongoing freedom.

b. The existing procedures are constitutionally sufficient.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioners' liberty here is minimal. First, noncitizens have no right to a hearing before an immigration judge under Section 1225(b). Likewise, there is no requirement for such a hearing before re-detention after revocation of release. The Supreme Court has warned courts against reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

c. The Government has a strong interest in returning noncitizens to custody who violate conditions of release.

Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth

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Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in enforcing compliance with its orders of release on recognizance and returning individuals to custody who violate their terms.

In short, the three *Mathews* factors demonstrate that Petitioners' detention comports with procedural due process.

CONCLUSION

Accordingly, Petitioners' habeas petition should be denied and dismissed without a hearing.

DATED this 13th day of November, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,253 words, in compliance with the Local Civil Rules.