The Honorable Thomas S. Zilly

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

MARTA CESILIA ESCALANTE PEREZ, Petitioner, v. JULIO HERNANDEZ, *et al.*,[1] Respondents.	Case No. 2:26-cv-00956-TSZ FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: April 8, 2026.

I. INTRODUCTION

This Court should deny Petitioner's Petition for Writ of Habeas Corpus. Dkt. 1. Petitioner, a native and citizen of Guatemala with a documented history of repeated failures to comply with reporting requirements while on release, is lawfully detained pending a final decision on her removal. Although Respondents respectfully disagree with the Court's prior determination that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b), Respondents have fully

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

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Department of Homeland Security Secretary Markwayne Mullin for Kristi Noem.

Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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complied with the requirements of 8 U.S.C. § 1226(a). Petitioner received an individualized bond hearing under 8 U.S.C. § 1226(a) before an Immigration Judge on December 9, 2025. At that hearing, Petitioner was represented by counsel, submitted her evidence, and the Immigration Judge denied bond after finding her to be a flight risk. Petitioner's subsequent administrative appeal was dismissed as untimely. No constitutional or statutory violation has occurred. The Petition should be denied in full.

II. FACTUAL AND PROCEDURAL HISTORY

A. Petitioner Marta Cesilia Escalante Perez

Petitioner is a native and citizen of Guatemala. Declaration of Deportation Officer Ian Bloom (Bloom Decl.) ¶ 3. In October 2015, she was encountered by U.S. Customs and Border Protection near Yuma, Arizona, and issued a Notice to Appear charging her as removable under 8 U.S.C. § 1182(a)(6)(A)(i). Bloom Decl., ¶ 4; Declaration of Lawrence Van Daley (Van Daley Decl.) Exhibit (Ex.) 1, Notice to Appear. Petitioner was released on an Order of Release on Own Recognizance (OREC) that included reporting requirements. Bloom Decl., ¶ 4. Over the following years, Petitioner repeatedly failed to comply with those requirements, missing multiple check-ins throughout 2016 and again missing multiple check-ins over the course of 2020. Bloom Decl., ¶ 5. On January 23, 2023, an Immigration Judge dismissed her then-pending immigration proceedings. Bloom Decl., ¶ 6. On August 7, 2025, ICE agents encountered Petitioner, took her into custody, and transported her to the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. Bloom Decl., ¶ 7; Van Daley Decl., Ex. 2, Form I-213; Ex. 3, Warrant. A new Notice to Appear was issued charging her as removable under 8 U.S.C. § 1182(a)(6)(A)(i). Bloom Decl., ¶ 7.

Through counsel, Petitioner requested a bond hearing, which was held on October 8, 2025. Bloom Decl., ¶ 8. The Immigration Judge denied bond, and Petitioner reserved appeal but did not file a timely appeal to the Board of Immigration Appeals (BIA). *Id*. On October 4, 2025, Petitioner

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appeared with counsel for a merits hearing on her removal case. Bloom Decl., ¶ 9. The Immigration Judge denied relief and ordered her removed to Guatemala. *Id*.; Van Daley Decl., Ex. 4, Removal Order. Petitioner filed a timely appeal to the BIA on October 28, 2025, which remains pending. Bloom Decl., ¶ 9.

On October 21, 2025, Petitioner joined a group habeas petition filed in this District challenging detention classifications for certain noncitizens encountered after entering without inspection. Dkt. 1 ¶ 71. On November 26, 2025, the Honorable Tiffany Cartwright granted relief in that matter, determining that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b) and ordering a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days. Dkt. 1 ¶¶ 73-74. On December 9, 2025, Petitioner received that hearing before an Immigration Judge. Bloom Decl., ¶ 10. She was represented by counsel and submitted her evidence. The Immigration Judge denied bond, finding Petitioner a flight risk. *Id*. Petitioner reserved appeal. *Id*. On March 17, 2026, Petitioner filed an appeal of the bond denial with the BIA; that appeal was dismissed as untimely on March 31, 2026. *Id*.; Van Daley Decl., Ex. 5, BIA Bond Order.

B. Detention Authority

The Immigration and Nationality Act (INA) provides distinct statutory frameworks for the detention of noncitizens during removal proceedings. 8 U.S.C. § 1225(b), generally mandates detention for certain noncitizens who are inadmissible and encountered upon arrival or shortly thereafter, pending a determination of removability or credible fear. In contrast, 8 U.S.C. § 1226(a), authorizes the Attorney General[2] to arrest and detain an alien pending a decision on whether the alien is to be removed from the United States. Under this provision, the government

[2] Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining aliens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security. *See also* 6 U.S.C. § 251.

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may also release the alien on bond of at least 1,500 dollars or conditional parole. *See* 8 U.S.C. § 1226(a). Because Petitioner's removal order is not yet final, her appeal to the BIA remains pending, and she is not subject to post-removal-order detention under 8 U.S.C. § 1231.

Immigration judges are authorized to conduct bond hearings and make custody redeterminations under 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1. These bond proceedings are informal in nature. Consistent with Executive Office for Immigration Review policy, bond hearings are generally not recorded. *See* EOIR Immigration Court Practice Manual, Ch. 8.3 (Bond Proceedings) ("Generally not recorded. Bond hearings are generally not recorded."). Custody decisions are committed to the sound discretion of the Immigration Judge. Judicial review of such discretionary determinations is limited. *See* 8 U.S.C. § 1226(e) (providing that no court may set aside any action or decision by the Attorney General regarding the detention or release of any alien, or the grant, revocation, or denial of bond or parole, except as provided in subsection (e)). Habeas corpus review under 28 U.S.C. § 2241 extends to the legality of detention but does not permit re-litigation of purely discretionary factual findings, such as a determination of flight risk. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022).

III. LEGAL AUTHORITY

This Court has jurisdiction to review Petitioners' habeas claims under 28 U.S.C. § 2241, as habeas jurisdiction extends to challenges to immigration detention. Zadvydas v. Davis, 533 U.S. 678, 688 (2001). However, the Petition fails on the merits. Petitioners' detention is lawful, and their claims of constitutional and statutory violations are without merit

IV. ARGUMENTS

A. Petitioner's Detention Does Not Violate Procedural Due Process

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting

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Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). In the immigration detention context, due process requires adequate procedural protections to ensure that the government's justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint. *See Rodriguez Diaz*, 53 F.4th at 1206 (applying the flexible *Mathews* framework to due process challenges in immigration detention and noting that the Ninth Circuit has regularly applied *Mathews* to due process challenges to removal proceedings).

Under the *Mathews* balancing test, courts consider: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335.

Here, Petitioner's private interest in liberty is substantial, as freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause. *See Rodriguez Diaz*, 53 F.4th at 1199 (recognizing a detained person's liberty interest as substantial). However, the procedures afforded to Petitioner more than adequately protected that interest and minimized any risk of erroneous deprivation. Petitioner received an individualized bond hearing before a neutral Immigration Judge on December 9, 2025, consistent with the Court's November 26, 2025, order. Petitioner was represented by counsel, submitted her evidence, and the Immigration Judge made an individualized determination that she presented a flight risk. These procedures provided notice and a meaningful opportunity to be heard. *See Rodriguez Diaz*, 53 F.4th at 1206-07 (holding that 8 U.S.C. § 1226(a) procedures, including an initial bond hearing before a neutral decisionmaker with the opportunity to be represented by counsel and present evidence, satisfy due process).

Any alleged deficiency in the timing of DHS's initial custody determination under 8 C.F.R. § 1236.1(c)(8) was fully cured by the prompt provision of the Court-ordered 8 U.S.C. § 1226(a)

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bond hearing. Petitioner identifies no prejudice from the initial timing, especially given that she had already received a prior bond hearing on October 8, 2025, and the December 9 hearing directly addressed the relief sought in the group habeas proceedings.

The absence of a Mam-language interpreter does not rise to a due process violation. Competent translation is fundamental to a full and fair hearing, but a due process claim based on translation requires a showing of prejudice, that is, that the inadequate interpretation prevented the petitioner from presenting relevant evidence or otherwise fundamentally undermined the fairness of the proceeding. *See Perez-Lastor v. INS*, 208 F.3d 773, 777-78 (9th Cir. 2000) (deportation proceedings violate due process if incompetent translation prevents a full and fair hearing and the petitioner suffers prejudice). Petitioner does not allege that a language barrier actually impaired her ability present evidence, or that any specific prejudice resulted. To the contrary, substantial evidence was submitted on her behalf, and she reserved appeal, indicating she understood the outcome and the basis for the flight-risk finding.

Similarly, the lack of an audio recording of the bond hearing does not violate due process. *See Yong Guo v. Nielson*, C18-1557-RSM-BAT, 2019 WL 2515166, at *2 (W.D. Wash. June 18, 2019) (finding no procedural due process requirement under the Fifth Amendment for a contemporaneous recording of the bond hearing when the detention has not become prolonged.). Bond hearings under 8 U.S.C. § 1226(a) are informal proceedings, and EOIR policy provides that they are generally not recorded. *See* EOIR Immigration Court Practice Manual, Ch. 8.3 (Bond Proceedings) (“Bond hearings are generally not recorded.”). No statute or regulation mandates a verbatim transcript or audio recording for such hearings. *See* 8 C.F.R. § 1003.19(d). Petitioner has not demonstrated that the absence of a recording prejudiced her ability to appeal or seek further review; her administrative appeal was dismissed solely as untimely, not due to any inability to reconstruct the record.

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The procedures provided, an individualized hearing before a neutral decisionmaker, with representation by counsel and the opportunity to submit evidence, sufficiently protected Petitioner's liberty interest and mitigated the risk of erroneous deprivation, while serving the Government's strong interests in enforcing immigration laws and managing detention resources. *See Rodriguez Diaz*, 53 F.4th at 1206-13 (concluding that 8 U.S.C. § 1226(a)'s procedures satisfy due process both facially and as applied, even after prolonged detention, without requiring additional safeguards such as a shifted burden of proof). Petitioner's detention therefore complies with the Fifth Amendment.

B. The Immigration Judge's Bond Denial Complied With the INA

Petitioner claims That her bond hearing violated the INA and bond regulations through unlawful denial of release on bond. Dkt. 1 at 108-112. This claim is foreclosed by statute and regulation. Under 8 U.S.C. § 1226(a), the Attorney General (and by delegation the Immigration Judge) has broad discretion to detain an alien pending a decision on removal or to release the alien on bond of at least 1,500 dollars or conditional parole. The statute contains no substantive criteria limiting this discretion beyond the minimum bond amount, nor does it impose any requirement for a written decision or audio recording. Immigration judges conduct bond hearings and make custody redeterminations pursuant to 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1. These proceedings are informal. *See* EOIR Immigration Court Practice Manual, Ch. 8.3 (Bond Proceedings).

Congress has expressly limited judicial review of discretionary bond decisions. 8 U.S.C. § 1226(e) provides that no court may set aside any action or decision by the Attorney General regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole, except as provided in that subsection. *See* 8 U.S.C. § 1226(e). This provision strips courts of jurisdiction to review the Immigration Judge's discretionary determination that Petitioner presented a flight risk. *See Rodriguez Diaz*, 53 F.4th at 1209 (distinguishing reviewable legal or

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constitutional errors from unreviewable discretionary findings such as flight risk or danger determinations). The Immigration Judge's finding that Petitioner is a flight risk is a classic discretionary determination not subject to habeas re-litigation.

Additionally, Petitioner's request for the Court to declare that EOIR violated her rights by failing to record the hearing or provide a contemporaneous written decision is unsupported by law. See Dkt. 1, Prayer for Relief. No statute or regulation imposes such requirements on 8 U.S.C. § 1226(a) bond hearings. *See* EOIR Immigration Court Practice Manual, Ch. 8.3 ("Bond hearings are generally not recorded."). The Immigration Judge provided an oral decision on the record explaining the flight-risk basis. The record of proceedings for bond matters consists of documents submitted and the Immigration Judge's notes; no verbatim transcript is required or routinely prepared. Petitioner's administrative remedies were available but not timely pursued; her appeal to the BIA was dismissed as untimely on March 31, 2026.

Because the bond denial rests on an unreviewable exercise of discretion supported by the evidence before the Immigration Judge, and because no statutory or regulatory violation occurred, Petitioner's claim of unlawful denial of release on bond fails as a matter of law.

C. Petitioner's Requested Relief Is Unwarranted

None of this relief Petitioner is requesting is warranted. First, as explained above, no constitutional or statutory violation occurred. The December 9, 2025, bond hearing satisfied due process under the Fifth Amendment and complied with the governing statutes and regulations. The Immigration Judge provided an oral explanation of the flight-risk determination on the record. No statute or regulation requires a verbatim audio recording or a separate written decision for an 8 U.S.C. § 1226(a) bond hearing. *See* EOIR Immigration Court Practice Manual, Ch. 8.3 (Bond Proceedings) ("Bond hearings are generally not recorded."). A declaration of violation is therefore inappropriate.

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Second, immediate release is not justified. Petitioner is lawfully detained under 8 U.S.C. § 1226(a), following an individualized bond determination by a neutral Immigration Judge. Habeas relief ordering release is reserved for cases in which detention is unlawful, not for routine disagreement with a discretionary flight-risk finding. *See Rodriguez Diaz*, 53 F.4th at 1209 (habeas jurisdiction does not extend to review of purely discretionary bond determinations). Petitioner's history of repeated non-compliance with reporting requirements while previously released provides a sufficient basis for the Immigration Judge's discretionary decision to maintain custody. Continued detention pending resolution of her pending appeal to the BIA on the merits of her removal case is authorized by statute and does not violate the Constitution.

Third, no further individualized determination or de novo hearing before this Court is required. Petitioner has already received the precise relief ordered by the Honorable Tiffany Cartwright on November 26, 2025: an individualized bond hearing under 8 U.S.C. § 1226(a). That hearing provided notice, representation by counsel, and the opportunity to submit evidence. The procedures employed satisfied due process. *See Rodriguez Diaz*, 53 F.4th at 1206-07 (holding that section 1226(a) procedures, including an initial bond hearing before a neutral decisionmaker with the opportunity to be represented by counsel and present evidence, satisfy due process). Ordering yet another hearing, whether before EOIR or this Court, would improperly convert habeas review into appellate review of a discretionary administrative decision that Congress has insulated from such review. *See* 8 U.S.C. § 1226(e).

Petitioner has identified no ongoing violation that would justify expanding that relief or granting additional individualized relief in this case. Accordingly, the Petition should be denied without further proceedings.

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V. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied in its entirety.

DATED this 3rd day of April, 2026.

Respectfully submitted,

s/ Lawrence Van Daley
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I certify that this memorandum contains 2,619 words, in compliance with the Local Civil Rules.