

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Omer Arpac v. Philip Rhoney, in his official capacity as Acting Deputy Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement, et al.

No. 6:26-CV-6118-EAW (W.D.N.Y. Feb. 2, 2026) · No. 6:26-CV-6118-EAW · Decided February 2, 2026

SUMMARY

The United States District Court for the Western District of New York granted Omer Arpac’s 28 U.S.C. § 2241 petition to the extent he sought a bond hearing concerning his immigration detention. The Court ordered an immigration judge to conduct the hearing, placed the burden on the government to prove dangerousness or flight risk by clear and convincing evidence, and required consideration of less-restrictive alternatives and ability to pay.

CASE DETAILS

COURT	United States District Court for the Western District of New York
WRITING FOR THE COURT	Elizabeth A. Wolford
JURISDICTION	United States District Court for the Western District of New York
DECIDED	February 2, 2026
DOCKET	6:26-CV-6118-EAW
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petitioner, a civil immigration detainee, sought habeas relief under 28 U.S.C. § 2241 challenging his detention pending removal proceedings and requesting a bond hearing.
STANDARD OF REVIEW	The order does not state a separate standard of review; it evaluates the legality of immigration detention under the governing detention statutes and constitutional due-process principles.
PRECEDENTIAL VALUE	Unknown
PARTIES	Omer Arpac v. Philip Rhoney, in his official capacity as Acting Deputy Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement, et al.

TOPICS

immigration detention

removal proceedings

procedural due process

constitutional law

remedies

PRACTICE AREAS

immigration law

habeas corpus

constitutional law

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether petitioner's detention pending removal proceedings arose under 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226.
2. Whether due process required petitioner to receive a bond hearing.
3. Whether the government must prove dangerousness or flight risk by clear and convincing evidence at the bond hearing.
4. Whether the immigration judge must consider less-restrictive alternatives, petitioner's ability to pay, and alternative conditions of release.

HOLDINGS

1. A noncitizen who is present in the United States without having been admitted or paroled is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) when the circumstances instead place the detention under 8 U.S.C. § 1226; likewise, when parole has expired and a subsequent re-arrest is an independent detention decision rather than a continuation of the initial border encounter, the detention arises under § 1226.
2. Petitioner was entitled to a bond hearing before an immigration judge, and continued detention after the hearing requires clear and convincing evidence that no condition or combination of conditions can reasonably ensure petitioner's appearance and the safety of the community.
3. At the bond hearing, the immigration judge must consider whether less-restrictive alternatives can reasonably address the government's interests; if the government fails to meet its burden, any bond determination must account for petitioner's ability to pay and alternative conditions of release.

KEY QUOTATIONS

"the government shall have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence." (Order ¶ 2)

"the IJ must find by clear and convincing evidence and make findings that no condition or combination of conditions of release can reasonably ensure Petitioner's appearance and the safety of the community" (Order ¶ 4)

FACTUAL BACKGROUND

Omer Arpac was detained by U.S. Immigration and Customs Enforcement at the Buffalo Federal Detention Facility in Batavia, New York. He was being held pending removal proceedings and alleged that his continued

detention violated the United States Constitution. The court treated the detention as arising under 8 U.S.C. § 1226 rather than the mandatory-detention provision of 8 U.S.C. § 1225(b)(2), consistent with its prior decisions.

PROCEDURAL HISTORY

Arpac filed a § 2241 petition alleging that his detention in ICE custody violated the United States Constitution. The district court granted the petition to the extent it sought a bond hearing and ordered an immigration judge to conduct the hearing by February 9, 2026, subject to a reasonable continuance requested by petitioner.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Respondents must provide petitioner with a bond hearing before an immigration judge on or before February 9, 2026, subject to a reasonable continuance requested by petitioner. The immigration judge must apply the clear-and-convincing-evidence standard, consider less-restrictive alternatives, and consider ability to pay and alternative release conditions. Respondents must file a status update by February 12, 2026.

CASES CITED

- *Quitizaca Quitisaca v. Bondi*, No. 6:25-CV-6527-EAW, 2025 WL 3264440 (W.D.N.Y. Nov. 24, 2025)
- *Lieogo v. Freden*, No. 6:25-CV-06615 EAW, 2025 WL 3290694 (W.D.N.Y. Nov. 26, 2025)
- *Ivonin v. Rhoney*, No. 6:25-CV-06673 EAW, 2026 WL 199283 (W.D.N.Y. Jan. 26, 2026)
- *Mathews v. Eldridge*, 424 U.S. 319 (1976)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK OMER ARPAC, Petitioner, v. ORDER 6:26-CV-6118-EAW PHILIP RHONEY, in his official capacity as Acting Deputy Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement, et al., Respondents. Petitioner Omer Arpac (“Petitioner”) is a civil immigration detainee alleging that that he is being detained in United States Immigration and Customs Enforcement (“ICE”) custody pending removal proceedings in violation of the United States Constitution.

(Dkt. 1). He seeks relief under 28 U.S.C. § 2241. (*Id.*). Petitioner is being held at the Buffalo Federal Detention Facility in Batavia, New York. (*Id.* at ¶ 6). The Court has issued written decisions in *Quitizaca Quitisaca v. Bondi*, No. 6:25- CV-6527-EAW, 2025 WL 3264440 (W.D.N.Y. Nov. 24, 2025), and *Lieogo v. Freden*, No. 6:25-CV-06615 EAW, 2025 WL 3290694 (W.D.N.Y.

Nov. 26, 2025), finding that noncitizens who are present in the United States without having been admitted or paroled are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) but instead are subject to detention under section 1226. Furthermore, the Court has issued a written decision in *Ivonin v. Rhoney*, No. 6:25-CV-06673 EAW, 2026 WL 199283 (W.D.N.Y.

Jan. 26, 2026), finding that where a petitioner is paroled into the country and that parole expires, and the subsequent re-arrest is not a continuation of the initial border encounter, but an independent decision to detain the individual after the expiration of his parole, the detention pursuant to that re-arrest arises under § 1226.

Accordingly, for the same reasons the Court has previously articulated in the aforementioned decisions, the petition is granted to the extent that Petitioner seeks a bond hearing, and a bond hearing shall be conducted in accordance with the following terms: 1. Petitioner shall be granted a bond hearing before an immigration judge (“IJ”) on or before February 9, 2026.

If Petitioner requests a continuance that results in a bond hearing date outside this deadline, such a continuance will comply with this Order as long as the new date falls within a reasonable time period. 2. After considering the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court concludes that the government shall have the burden to demonstrate dangerousness or flight risk by clear and convincing evidence.

See *Lieogo v. Freden*, No. 6:25-CV-06615 EAW, 2025 WL 3290694, at *4-6 (W.D.N.Y. Nov. 26, 2025). In deciding whether the government has met its burden of proof, the IJ must consider whether less-restrictive alternatives to detention can reasonably address the government’s interest in Petitioner’s continued detention. 3. If the IJ finds that the government has not met its burden, then in setting any bond the IJ must consider Petitioner’s ability to pay and alternative conditions of release.

4. Thus, in order to continue Petitioner’s detention after any bond hearing, the IJ must find by clear and convincing evidence and make findings that no condition or combination of conditions of release can reasonably ensure Petitioner’s appearance and the safety of the community—that is, even with conditions, Petitioner presents an identified and articulable risk of flight or a threat to another person or the community.

5. Respondents are directed to file a status update with the Court on or before February 12, 2026. SO ORDERED. (ro [ky SBN Die KLIZABPETHA. WOLFORD Chief Judge United States District Court Dated: February 2, 2026 Rochester, New York -3-