

District Judge Ricardo S. Martinez

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

DAYAN CABRERA PEREZ, *et al.*,

Petitioners,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02542-RSM

FEDERAL RESPONDENTS'¹ RETURN

Noted for Consideration:
January 5, 2026

I. INTRODUCTION

Petitioners are ten noncitizens in U.S. Immigration and Customs Enforcement ("ICE") detention at the Northwest ICE Processing Center ("NWIPC"). They entered the United States separately and have no connection other than their current detentions. Each was initially detained and then released on an order of recognizance ("OREC") or parole. They have since been redetained and are in different points of their removal proceedings, including appealing orders of removal to the Board of Immigration Appeals ("BIA").

Petitioners assert that their redetentions without written notice and a pre-detention hearing

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

1 before a neutral decisionmaker violate due process. Pet., ¶¶ 141-144. They ask this Court to
2 order their release and enjoin Respondents from redetaining them “absent written notice and a
3 hearing prior to redetention where Respondents must prove by clear and convincing evidence that
4 each Petitioner is a flight risk or danger to the community and that no alternatives to detention
5 would mitigate those risks.” *Id.*, Prayer for Relief. “Due process is flexible and calls for such
6 procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319,
7 334 (1976). By joining ten separate petitioners with factually different circumstances in one
8 habeas petition, Petitioners attempt to avoid individual analyses of their “particular situations.”
9 Instead, the Petition asks this Court to broadly find that due process requires pre-detention
10 hearings regardless of the facts. Accordingly, this Court should deny the Petition.

11 II. FACTUAL BACKGROUND

12 A. Petitioner Dayan Cabrera Perez

13 Cabrera is a citizen of Cuba who entered the United States without inspection or parole
14 on or around March of 2022 and was apprehended shortly thereafter. Pet., ¶ 30; Dkt. No. 3-1.
15 The U.S. Department of Homeland Security (“DHS”) issued him a notice to appear, placing him
16 in removal proceedings. ICE released him on OREC. Lambert Decl., Ex. 1, OREC.

17 On May 27, 2025, an immigration judge granted DHS’s motion to dismiss Cabrera’s
18 proceedings. Dkt. No. 3-3. Cabrera has administratively appealed the dismissal of his removal
19 proceedings, which is pending before the BIA. Pet., ¶ 33. After the hearing, ICE redetained
20 Cabrera and reprocessed him as an expedited removal. Pet., ¶ 33; Lambert Decl., Ex. 2, Form I-
21 213; Lambert Decl., Ex. 3, Notice and Order of Expedited Removal. He remains detained at the
22 NWIPC.

23 B. Petitioner John Segura Mendoza

24 Segura is a citizen of Colombia who entered the United States on or around September

1 2022 and was apprehended shortly thereafter. Pet., ¶ 38. DHS paroled him into the United States
2 the following day. Pet., ¶ 38. On November 10, 2025, ICE took him into custody at the ICE
3 Office in Spokane. Pet., ¶ 44; Lambert Decl., Ex. 4, Form I-213; Lambert Decl., Ex. 5, Warrant
4 for Arrest; Lambert Decl., Ex. 6, Notice to Appear. A master calendar hearing is scheduled for
5 January 6, 2026, in the Tacoma Immigration Court. Burns Decl., ¶ 22.

6 **C. Petitioner Gabriela Camacho Moreno**

7 Camacho is a citizen of Mexico who entered the United States without inspection or parole
8 in January 2024 and was apprehended after approaching immigration officers. Pet., ¶ 49. DHS
9 issued her a notice to appear and released her on OREC. Pet., ¶ 49; Dkt. No. 3-10; Dkt. No. 3-
10 11. On October 14, 2025, ICE redetained Camacho and her son. Pet., ¶ 55; Lambert Decl., Ex.
11 7, Form I-213; Lambert Decl., Ex. 8, Warrant for Arrest; Lambert Decl., Ex. 9, Notice of Custody
12 Determination. Camacho's next immigration hearing is set for January 21, 2026. Burns Decl.,
13 ¶ 30.

14 **D. Petitioner Melissa Merizema**

15 Merizema, a citizen of Haiti, is an arriving alien who applied for entry into the United
16 States at a port of entry. She was paroled into the United States in February 2024. Pet., ¶ 60;
17 Dkt. No. 3-12. DHS served her with a notice to appear the next day. Burns Decl., ¶ 33. ICE
18 redetained her on July 31, 2025. Dkt No. 3-13; Lambert Decl., Ex. 10. Merizema's immigration
19 proceedings were transferred to the Tacoma Immigration Court. Pet., ¶ 66. On November 25,
20 2025, an Immigration judge ordered her removed. Lambert Decl., Ex. 11, Order of the IJ.
21 Merizema asserts that she has appealed this decision to the BIA. Pet., ¶ 66.

22 **E. Petitioner Flor de Maria Mendez Jovel**

23 Mendez is a citizen of Guatemala who entered the United States without inspection or
24 parole in December 2023. Pet., ¶ 71. After a credible fear interview, DHS issued her a notice to

1 appear placing her into removal proceedings. Lambert Decl., Ex. 12, Notice to Appear. ICE
2 released her on parole. Lambert Decl., Ex. 13, Interim Notice Authorizing Parole. On October
3 31, 2025, ICE redetained Mendez pursuant to a traffic stop and transferred to the NWIPC.
4 Lambert Decl., Ex. 13, Notice to Appear. On December 23, 2025, an immigration judge sustained
5 the charges of removability and directed Guatemala as the country of removal. An individual
6 calendar hearing is scheduled for January 9, 2026. Burns Decl., ¶ 55.

7 **F. Petitioner Arun**

8 Arun is a citizen of India who entered the United States without inspection or parole in
9 May 2024 and was apprehended shortly thereafter. Pet., ¶ 80. DHS issued him a notice to appear
10 and released him on OREC. Dkt. No. 3-15; Lambert Decl., Ex. 14, OREC. ICE redetained Arun
11 on November 7, 2025. Pet., ¶ 85; Dkt. No. 3-16; Lambert Decl., Ex. 15, Warrant for Arrest;
12 Lambert Decl., Ex. 16, Notice of Custody Determination. Arun's next immigration hearing is
13 scheduled for January 15, 2026. Burns Decl., ¶ 68.

14 **G. Petitioner Shuke Hirey**

15 Hirey is a citizen of Somalia who entered the United States without inspection or parole
16 in April 2024, and he was apprehended shortly thereafter. Lambert Decl., Ex. 17, Form I-213. In
17 May, DHS issued him a notice to appear placing him into removal proceedings and released him
18 on OREC. Lambert Decl., Ex. 18, Notice to Appear; Lambert Decl., Ex. 19, OREC. On
19 December 5, 2025, ICE redetained Hirey and transferred him to the NWIPC. Lambert Decl., Ex.
20 20, Form I-213; Lambert Decl., Ex. 21, Warrant for Arrest; Lambert Decl., Ex. 22, OREC
21 Revocation. Hirey's next immigration hearing is scheduled for January 5, 2026. Burns Decl.,
22 ¶ 80.

23 **H. Petitioner Daljeet Kaur**

24 Kaur is a citizen of India who entered the United States without inspection or parole in

1 January 2022, and she was apprehended shortly thereafter. Pet., ¶ 100. DHS issued her a notice
2 to appear placing her into removal proceedings and subsequently released her on OREC. Dkt.
3 No. 3-17; Lambert Decl., Ex. 23, OREC. On September 25, 2025, ICE redetained Kaur due to
4 release violations. Dkt. No. 3-18, Form I-213, at 6; Lambert Decl., Ex. 24, Warrant for Arrest.
5 An immigration judge ordered her removed to India on November 25, 2025. Burns Decl., ¶ 89.
6 Petitioner has appealed this order to the BIA. Burns Decl., ¶ 90.

7 **I. Petitioner Marialissa Lopez Ramirez**

8 Lopez is a citizen of Colombia who entered the United States in November 2024 and was
9 apprehended after she presented herself to an officer at the border. Pet., ¶ 111. She was issued a
10 notice and order of expedited removal and released with an ankle monitor. *Id.*; Lambert Decl.,
11 Ex. 25, Notice. ICE redetained her on January 28, 2025. Dkt. No. 3-21; Lambert Decl., Ex. 26,
12 Warrant for Arrest. DHS issued her a notice to appear in April 2025. Lambert Decl., Ex. 27,
13 Notice to Appear. An immigration judge ordered her removed to Colombia in July. Lambert
14 Decl., Ex. 28, Order. Petitioner has appealed the order to the BIA. Burns Decl., ¶ 100.

15 **J. Petitioner Noe Siquina Riscajche**

16 Siquina is a citizen of Guatemala who entered the United States without inspection or
17 parole in January 2024 and was detained shortly thereafter. Pet., ¶ 120. DHS issued him a notice
18 to appear and released him on OREC. Dkt. No. 3-22; Lambert Decl., Ex. 29, OREC. On
19 November 22, 2025, ICE redetained Siquina as a result of a traffic stop. Lambert Decl., Ex. 30,
20 Form I-213. ICE revoked his OREC. Lambert Decl., Ex. 31, OREC Revocation. Siquina's next
21 immigration hearing is scheduled for December 30, 2025. Burns Decl., ¶ 107.

22 **III. LEGAL BACKGROUND**

23 **A. Expedited Removal Proceedings, Mandatory Detention, and Temporary Parole**

24 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the

1 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
2 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
3 591 U.S. 103, 106 (2020). Section 1225 applies to “applicants for admission” to the United States,
4 who are defined as “[a]n alien present in the United States who has not been admitted or who
5 arrives in the United States (whether or not at a designated port of arrival and including an alien
6 who is brought to the United States after having been interdicted in international or United States
7 waters).” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those
8 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
9 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure*
10 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
12 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
13 or return to the noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4).
14 If the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
15 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
16 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum
17 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
18 removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8
19 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Matter of M-S-*, 27 I&N Dec. 509, 516
20 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under
21 Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.
22 520, 524 (BIA 2011).

23 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
24 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583

U.S. at 283. This parole terminates automatically at the expiration of the time for which parole was authorized, or upon service of a charging document for either expedited removal proceedings under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. §§ 212.5(e)(1); (2)(i). Upon termination of parole, the applicant reverts to the status that he or she had at the time of parole. *See id.*

B. Revocation of Discretionary Release from Detention

8 C.F.R. § 1236.1(c)(8) provides that “[a]ny officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” Section 236.1(c)(9) provides for the revocation of such release: “When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained.”

IV. ARGUMENT

A. Due process does not require a pre-deprivation hearing before redetention.

The plain language of the statute is clear: Petitioners are subject to detention under Section 1225(b) because they are arriving aliens or applicants for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Section 1225(b)(1) indisputably requires the mandatory detention of arriving aliens for the duration of their credible fear determination and removal proceedings, unless they are paroled. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); 8 C.F.R. § 1001.1(q). Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not

1 clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C. § 1225(b)(2)(A). The INA
2 specifies that “[a]n alien present in the United States who has not been admitted . . . shall be
3 deemed for purposes of this Act an applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioners
4 do not dispute that they are noncitizens who are present in the United States without having been
5 admitted. Thus, except for Petitioners who have been found to be arriving aliens, they are
6 “applicants for admission” and subject to mandatory detention under Section 1225(b).

7 Pre-deprivation hearings to determine whether Petitioners were flight risks or dangerous
8 were not required prior to their arrest. There is no statutory or regulatory requirement for a
9 hearing before an individual in removal proceedings is redetained, and the Supreme Court has
10 warned courts against reading additional procedural requirements into the Immigration and
11 Nationality Act (“INA”). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining
12 to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts
13 . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen
14 to grant them”) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense*
15 *Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). For example, a pre-deprivation hearing
16 for a person whose Section 1182(d)(5) parole has expired, which applies to some Petitioners here,
17 would distort the purpose and limitations of parole. Parole automatically terminates without
18 written notice when it expires. 8 C.F.R. § 212.5(e)(1). Upon termination of parole, the applicant
19 reverts to the status that he or she had at the time of parole. Thus, detention would be mandatory
20 pursuant to 8 U.S.C. § 1225(b) and no individualized custody analyses would apply.

21 Federal Respondents acknowledge that district courts have recently decided that the
22 revocation of an OREC requires a pre-detention hearing to determine if that noncitizen is a flight
23 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
24 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate

1 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination set forth
2 in Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)).
3 These decisions err by integrating Section (c)(8)'s requirements with Section (c)(9). Both
4 Sections provide that the decisions to release or revoke are discretionary. But Section
5 1236.1(c)(8) includes language requiring the officer to decide that the alien "would not pose a
6 danger to property or persons, and that the alien is likely to appear for any future proceeding." In
7 contrast, Section 1236.1(c)(9) does not require such a determination and specifically provides that
8 "release may be revoked at any time." Here, Petitioners are subject to mandatory detention. Thus,
9 analyses of their potential flight risk or dangerousness would be immaterial, and hearings would
10 be futile.

11 Federal Respondents recognize the "weighty liberty interests implicated by the
12 Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
13 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
14 from immigration detention have a protected liberty interest in remaining out of custody, the
15 weight of that liberty must be considered in the broader picture of the immigration system, which
16 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all,
17 "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
18 Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to
19 aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th
20 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme
21 Court has explained, "[i]n the exercise of its broad power over naturalization and immigration,
22 Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v.*
23 *Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention
24 during deportation proceedings as a constitutionally valid aspect of the deportation process."

1 *Demore*, 538 U.S. at 523.

2 The Government has a heightened interest in the immigration detention context.
3 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the
4 Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
5 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez*
6 *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes
7 to determining whether removable aliens must be released on bond during the pendency of
8 removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. Accordingly, due process does not
9 require pre-deprivation hearings in all circumstances where individuals are detained after being
10 released, including for Petitioners here.

11 **B. Even if this Court were to enjoin Petitioners’ redetention without a pre-deprivation**
12 **hearing, due process does not require the Government to bear the burden of proof**
such hearings.

13 No Supreme Court case has ever required the Government to justify immigration
14 detention by clear and convincing evidence. Even if this Court should order Petitioners’ releases,
15 this Court should not grant Petitioners’ request to enjoin their redetention “absent written notice
16 and a hearing prior to redetention where Respondents must prove by clear and convincing
17 evidence that each Petitioner is a flight risk or danger to the community and that no alternatives
18 to detention would mitigate those risks.” Pet., Prayer for Relief. The Constitution does not
19 require the government to bear the burden of proof at a predeprivation hearing. Simply put, the
20 Supreme Court has *always* affirmed the constitutionality of detention pending removal
21 proceedings, notwithstanding that the government has *never* borne the burden to justify such
22 detention by clear and convincing evidence. See, e.g., *Demore v. Kim*, 538 U.S. 510, 522, 532
23 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) (“We are aware of no
24 Supreme Court case placing the burden on the government to justify the continued detention of

1 [a noncitizen], much less through an elevated ‘clear and convincing’ showing.”). In fact, even
2 when considering a noncitizen subjected to potentially indefinite detention after the conclusion
3 of removal proceedings, the Supreme Court has placed the burden on the noncitizen, as opposed
4 to the Government, to justify release. *See Zadvydas v. Davis*, 533 U.S. 678, 701(2001). Thus,
5 the Court should not order ICE to bear the burden of proof prior to redetention. At most, the
6 Government should be required to demonstrate dangerousness or flight risk by preponderance of
7 the evidence in line with the immigration officer’s initial determination. 8 C.F.R. § 1236.1(c)(8).

8 In addition to placing a heightened burden on the Government, Petitioners also seek to
9 unnecessarily require the Government to demonstrate that no “alternatives to detention” would
10 mitigate the danger or risk of flight at a pre-deprivation hearing. But even for criminal alien
11 detainees subjected to prolonged mandatory detention, the Ninth Circuit did not extend the
12 procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which is considered
13 “the high-water mark of procedural protections required by due process,” to include a
14 consideration of alternatives to detention for those found to be a danger to their community.
15 *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

16 While due process does not require pre-deprivation hearings prior to redetention, if this
17 Court should find otherwise, the Government should only be required to demonstrate that
18 Petitioners are a danger to the community or a flight risk by a preponderance of the evidence,
19 consistent with 8 C.F.R. § 1236.1(c)(8).

20 CONCLUSION

21 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
22 the Petition.

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1 DATED this 29th day of December, 2025.

2 Respectfully submitted,

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10 *Attorneys for Federal Respondents*

11 *I certify that this memorandum contains 3,291*
12 *words, in compliance with the Local Civil*
13 *Rules.*