

Magistrate Judge Brian A. Tsuchida

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

N.S.,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:26-cv-00161-BAT

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
February 4, 2026

I. INTRODUCTION

This Court should deny Petitioner's Petition for a Writ of Habeas Corpus. Dkt. 1. Petitioner asserts that the revocation of his conditional parole and resultant immigration detention violates due process. But U.S. Immigration and Customs Enforcement ("ICE") lawfully revoked Petitioner's conditional parole after the agency determined that he had not complied with the conditions of his release. Further, as an applicant for admission, Petitioner is properly detained at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b)(2)(A).

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

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Petitioner erroneously asserts that his re-detention without written notice and a pre-
2 detention hearing before a neutral decisionmaker violates due process. Dkt. 1, (“Petition” or
3 “Pet.”), ¶¶ 44-47. He asks this Court to order his release and “permanently” enjoin his “re-
4 detention during the pendency of his removal proceeding absent written notice and a hearing prior
5 to re-detention where Respondents must prove by clear and convincing evidence that he is a flight
6 risk or danger to the community and that no alternatives to detention would mitigate those risks.”
7 *Id.*, Prayer for Relief.

8 II. FACTUAL AND PROCEDURAL BACKGROUND

9 A. Detention Authority

10 Petitioner is an applicant for admission who is subject to mandatory detention pursuant to
11 8 U.S.C. § 1225(b). *see Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Applicants for
12 admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially
13 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and
14 certain other aliens designated by the Attorney General in her discretion. Separately, section
15 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered
16 by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583
17 U.S. 281, 287 (2018).

18 Congress has determined that all aliens subject to section 1225(b) are subject to mandatory
19 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means
20 of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or
21 significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283. This parole terminates
22 automatically at the expiration of the time for which parole was authorized, or upon service of a
23 charging document for either expedited removal proceedings under Section 1225(b) or removal
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1 proceedings under Section 1229a. 8 C.F.R. §§ 212.5(e)(1); (2)(i). Upon termination of parole, the
2 applicant reverts to the status that he or she had at the time of parole. *See Id.*

3 **B. Temporary admission under 8 U.S.C. § 1182(d)(5)(A).**

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

15 Federal regulations govern the expiration of parole and state that where the parole has
16 expired, “no written notice shall be required.” 8 C.F.R. § 212.5(e)(1).

17 **C. Revocation of discretionary release from detention.**

18 “Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release
19 an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such
20 release would not pose a danger to property or persons, and that the alien is likely to appear for
21 any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

22 Section 236.1(c)(9) provides for the revocation of such release: “When an alien who,
23 having been arrested and taken into custody, has been released, such release may be revoked at
24 any time in the discretion of the district director, acting district director, deputy district director,

1 assistant district director for investigations, assistant district director for detention and deportation,
2 or officer in charge (except foreign), in which event the alien may be taken into physical custody
3 and detained.”

4 **D. Petitioner N.S.**

5 Petitioner is a native and citizen of Russia. Pet., at 5; see also Declaration of Deportation
6 Officer Javier Delgado (“Delgado Decl.”) and the Declaration of Lawrence Van Daley (“Van
7 Lawrence Decl.”). Petitioner applied for admission into the United States on or about December
8 17, 2023, at the Calexico Port of Entry. Delgado Decl. ¶ 4. He was processed for expedited removal
9 under 8 U.S.C. § 1225(b)(1) and scheduled for a credible fear interview. *Id.* A Notice to Appear
10 (“NTA”) was issued on January 18, 2024, charging Petitioner as inadmissible under 8 U.S.C. §
11 1182(a)(7)(A)(i)(I) (applicant for admission without valid immigrant visa or entry document).
12 Delgado Decl. ¶ 6; *see also*, Van Lawrence Decl. at Exhibit A, Notice to Appear.

13 On January 25, 2024, Petitioner was paroled from DHS custody pursuant to 8 U.S.C. §
14 1182(d)(5)(A). Delgado Decl. ¶ 7; *see also*, Van Lawrence Decl. at Exhibit B, Parole Packet. One
15 condition of his parole was his enrollment and successful participation in the Alternatives to
16 Detention (“ATD”) program. *Id.* On February 12, 2024, Petitioner was released from detention on
17 an Order of Release on Recognizance (“OREC”) with instructions to comply with all conditions
18 of release to include compliance with the ATD program. Delgado Decl. ¶ 8; *see also*, Van
19 Lawrence Decl. at Exhibit C, Form I-220A OREC.

20 While enrolled in ATD, Petitioner missed several biometric check-ins, travelled multiple
21 times outside his authorized zone without notice or permission from DHS, and did not answer the
22 phone or was not physically at home when monitoring authority initiated a visit. Delgado Decl. ¶¶
23 10-11; *see also*, Van Lawrence Decl. at Exhibit D, Form I-213. This led to ICE Enforcement and
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1 Removal Operations (“ERO”) officers to issue a warrant for Petitioner’s arrest on July 26, 2025.

2 *Id*; *see also*, Van Lawrence Decl. at Exhibit E Form I-200.

3 On December 27, 2025, ICE ERO officers revoked Petitioner’s OREC and located him at
4 his place of employment. Delgado Decl. ¶ 14; *see*, Van Lawrence Decl. at Exhibit D, Form I-213;
5 *see also*, Van Lawrence Decl. at Exhibit C, Form I-220A OREC. Upon verification of Petitioner’s
6 identity, Petitioner fled from the officers, leading to a brief chase. Delgado Decl. ¶ 14. Petitioner
7 was quickly apprehended and detained at the Northwest ICE Processing Center pursuant 8 U.S.C.
8 § 1225(b)(2)(A). *Id*; *see*, Van Lawrence Decl. at Exhibit F, Form I-830E. Petitioner is currently
9 scheduled for his initial hearing before an Immigration Judge on February 11, 2026. Delgado Decl.
10 ¶ 15.

11 III. LEGAL STANDARD

12 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
13 petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
14 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
15 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

16 IV. ARGUMENT

17 A. Due process does not require a pre-deprivation hearing before re-detention

18 The plain language of the statute is clear: Petitioner is subject to mandatory detention under
19 Section 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I&N Dec.
20 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an
21 applicant for admission, if the examining immigration officer determines that an alien seeking
22 admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C. § 1225(b)(2)(A).
23 The INA specifies that “[a]n alien present in the United States who has not been admitted . . . shall
24 be deemed for purposes of this Act an applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner

1 does not dispute that he is a noncitizen who is present in the United States without having been
2 admitted. Thus, he is an “applicant for admission” and subject to mandatory detention under
3 Section 1225(b).³

4 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was
5 not required prior to his arrest in December of 2025. There is no statutory or regulatory requirement
6 for a hearing prior to re-detention, and the Supreme Court has warned courts against reading
7 additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573,
8 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6)
9 because “reviewing courts . . . are generally not free to impose [additional procedural rights] if the
10 agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power Corp. v. Nat.*
11 *Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

12 Federal Respondents acknowledge that district courts have recently found that the
13 revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight
14 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 25-cv-1192, 2025 WL
15 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate
16 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination set forth
17 in Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)).
18 These decisions err by incorporating Section (c)(8)’s requirements into Section (c)(9). Both
19 Sections provide that the decisions to release or revoke are discretionary. But Section 1236.1(c)(8)
20 includes language requiring the officer to decide that the alien “would not pose a danger to property
21 or persons, and that the alien is likely to appear for any future proceeding.” In contrast, Section
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23 ³ Federal Respondents acknowledge that courts have disagreed with the government’s interpretation of Section
24 1225(b) and found that mandatory detention for certain individuals to be unlawful as interpreted. *See, e.g.,*
Rodriguez Vazquez v. Bostock, No. 3:25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

1 1236.1(c)(9) does not require such a determination and specifically provides that “release may be
2 revoked at any time.” Here, Petitioner is subject to mandatory detention. Thus, analysis of his
3 potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

4 Federal Respondents recognize the “weighty liberty interests implicated by the
5 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
6 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
7 from immigration detention have a protected liberty interest in remaining out of custody, the
8 weight of that liberty must be considered in the broader picture of the immigration system, which
9 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
10 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
11 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that
12 would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
13 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has
14 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
15 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426
16 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during
17 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
18 538 U.S. at 523.

19 The Government has a heightened interest in the immigration detention context. *Rodriguez*
20 *Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth Circuit in
21 *Rodriguez Diaz* recognized that “the government clearly has a strong interest in preventing aliens
22 from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208
23 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to determining whether
24 removable aliens must be released on bond during the pendency of removal proceedings.”

1 *Rodriguez Diaz*, 53 F.4th at 1208. Accordingly, due process does not require a pre-deprivation
2 hearing in all circumstances where individuals are detained after being released, including for
3 Petitioner here.

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5 **B. Due process does not require the Government to bear the burden of proof at a pre-deprivation hearing.**

6 No Supreme Court case has ever required the Government to justify immigration
7 detention by clear and convincing evidence. Even if this Court should order Petitioner's release,
8 this Court should not grant his request to enjoin his re-detention "absent written notice and a
9 hearing prior to re-detention where Respondents must prove by clear and convincing evidence
10 that he is a flight risk or danger to the community and that no alternatives to detention would
11 mitigate those risks." Pet., Prayer for Relief ¶ (3).

12 The Constitution does not require the government to bear the burden of proof at a pre-
13 deprivation hearing. Simply put, the Supreme Court has always affirmed the constitutionality of
14 detention pending removal proceedings, notwithstanding that the government has never borne
15 the burden to justify such detention by clear and convincing evidence. *See, e.g., Demore v. Kim*,
16 538 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022)
17 ("We are aware of no Supreme Court case placing the burden on the government to justify the
18 continued detention of [a noncitizen], much less through an elevated 'clear and convincing'
19 showing."). In fact, even when considering a noncitizen subjected to potentially indefinite
20 detention after the conclusion of removal proceedings, the Supreme Court has placed the burden
21 on the noncitizen, as opposed to the Government, to justify release. *See Zadvydas v. Davis*, 533
22 U.S. 678, 701(2001). Thus, the Court should not order ICE to bear the burden of proof at a pre-
23 deprivation, if one were to be ordered. At most, the Government should be required to
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1 demonstrate dangerousness or flight risk by preponderance of the evidence in line with the
2 immigration officer's initial determination. 8 C.F.R. § 1236.1(c)(8).

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

11 While due process does not require a pre-deprivation hearing, if this Court should find
12 otherwise, the Government should only be required to demonstrate that Petitioner is a danger to
13 the community or a flight risk by a preponderance of the evidence, consistent with 8 C.F.R. §
14 1236.1(c)(8).

15 V. CONCLUSION

16 This Court should deny the relief sought here. Petitioner is subject to mandatory detention
17 pursuant to 8 U.S.C. § 1225(b)(2)(A).

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1 DATED this 30th day of January, 2026.

2 Respectfully submitted,

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s/ Lawrence Van Daley

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