

Magistrate Judge S. Kate Vaughan

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

K.A.,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:26-cv-00162-SKV

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 her 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 she had not complied with the conditions of her 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 her 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. She asks this Court to order her release and “permanently” enjoin her “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 she 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
24

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. *See*
7 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 temporary 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 K.A.**

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 March 10,
8 2023, at the San Ysidro, California Port of Entry. Delgado Decl. ¶ 3. Petitioner expressed a fear of
9 return to Russia and was referred for a credible fear interview with U.S. Citizenship and
10 Immigration Services (“USCIS”) on or about March 14, 2024. Delgado Decl. ¶¶ 3-4. A Notice to
11 Appear (“NTA”) was issued on April 5, 2024, charging Petitioner as inadmissible under 8 U.S.C.
12 § 1182(a)(7)(A)(i)(I) (applicant for admission without valid immigrant visa or entry document).
13 Delgado Decl. ¶ 4; *see*, Van Lawrence Decl. at Exhibit 1, NTA.

14 On April 26, 2024, Petitioner was granted humanitarian parole pursuant to INA §
15 212(d)(5), 8 U.S.C. § 1182(d)(5). Delgado Decl. ¶ 5; *see*, Van Lawrence Decl. at Exhibit 2, Parole
16 Packet. She was enrolled in the Alternatives to Detention (“ATD”) program on the same date. *See*,
17 *Id.* While enrolled in ATD, Petitioner accrued at least ten violations for missing biometric check-
18 ins. *See*, Delgado Decl. ¶¶ 8-17.

19 On January 3, 2026, ICE Enforcement and Removal Operations (“ERO”) officers detained
20 Petitioner for violations of her parole, terminated her from the ATD program, and issued a Form
21 I-286 (Notice of Custody Determination). Delgado Decl. ¶ 18; *see*, Van Lawrence Decl. at Exhibit
22 3, Form I-213, *see also*, Van Lawrence Decl. at Exhibit 4, Form I-200; *see also*, Van Lawrence
23 Decl. at Exhibit 6, Form I-286. Petitioner is currently detained at the Northwest ICE Processing
24 Center pursuant to 8 U.S.C. § 1225. *Id.*; *see also* Van Lawrence Decl. at Exhibit 5, Form I-830E.

1 The Petitioner has a pending Form I-589, application for Asylum, Withholding of Removal, and
2 Protection under the Convention Against Torture, pending with the Immigration Court in Tacoma
3 Washington. Delgado Decl. ¶ 19.

4 III. LEGAL STANDARD

5 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
6 petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
7 her custody is in violation of the Constitution, laws, or treaties of the United States. *See*, 28 U.S.C.
8 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

9 IV. ARGUMENT

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

11 The plain language of the statute is clear: Petitioner is subject to mandatory detention under
12 Section 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I&N Dec.
13 216, 220 (BIA 2025). Section 1225(b) requires mandatory detention of “an alien who is an
14 applicant for admission, if the examining immigration officer determines that an alien seeking
15 admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C. § 1225(b)(2)(A).
16 The Immigration and Nationality Act (“INA”) specifies that “[a]n alien present in the United States
17 who has not been admitted . . . shall be deemed for purposes of this Act an applicant for admission.”
18 8 U.S.C. § 1225(a)(1). Petitioner has not dispute that he is a noncitizen who is present in the
19 United States without having been admitted. Thus, he is an “applicant for admission” and subject
20 to mandatory detention under Section 1225(b)³.

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22
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 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was
2 not required prior to her arrest in January of 2026. There is no statutory or regulatory requirement
3 for a hearing prior to re-detention, and the Supreme Court has warned courts against reading
4 additional procedural requirements into the INA. *See, Johnson v. Arteaga-Martinez*, 596 U.S. 573,
5 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6)
6 because “reviewing courts . . . are generally not free to impose [additional procedural rights] if the
7 agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power Corp. v. Nat.*
8 *Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

9 Federal Respondents acknowledge that district courts have recently found that the
10 revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight
11 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 25-cv-1192, 2025 WL
12 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate
13 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination set forth
14 in Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)).
15 These decisions err by incorporating Section (c)(8)’s requirements into Section (c)(9). Both
16 Sections provide that the decisions to release or revoke are discretionary. But Section 1236.1(c)(8)
17 includes language requiring the officer to decide that the alien “would not pose a danger to property
18 or persons, and that the alien is likely to appear for any future proceeding.” In contrast, Section
19 1236.1(c)(9) does not require such a determination and specifically provides that “release may be
20 revoked at any time.” Here, Petitioner is subject to mandatory detention. Thus, analysis of his
21 potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

22 Federal Respondents recognize the “weighty liberty interests implicated by the
23 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
24 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released

1 from immigration detention have a protected liberty interest in remaining out of custody, the
2 weight of that liberty must be considered in the broader picture of the immigration system, which
3 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
4 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
5 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that
6 would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
7 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has
8 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
9 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426
10 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during
11 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
12 538 U.S. at 523.

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

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

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

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

23 In addition to placing a heightened burden on the Government, Petitioner also seeks to
24 unnecessarily require the Government to demonstrate that no "alternatives to detention" would

1 mitigate the danger or risk of flight at a pre-deprivation hearing. Pet., Prayer for Relief ¶ (3). But
2 even for criminal alien detainees subjected to prolonged mandatory detention, the Ninth Circuit
3 did not expand the procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which
4 is considered “the high-water mark of procedural protections required by due process,” to include
5 a consideration of alternatives to detention for those found to be a danger to their community.
6 *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

7 While due process does not require a pre-deprivation hearing, if this Court should find
8 otherwise, the Government should only be required to demonstrate that Petitioner is a danger to
9 the community or a flight risk by a preponderance of the evidence, consistent with 8 C.F.R. §
10 1236.1(c)(8).

11 V. CONCLUSION

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

14
15 DATED this 30th day of January, 2026.

16 Respectfully submitted,

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