The Honorable Lauren King

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LORAINE ELIZABETH CETINO GARCIA, Petitioner, v. KRISTI NOEM, Secretary of U.S. Department of Homeland Security; PAMELA BONDI, United States Attorney General; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; LAURA HERMOSILLO, Acting Seattle Field Office Director, Immigration and Customs Enforcement; BRUCE SCOTT,[1] Warden, Northwest ICE Processing Center, Respondents.	Case No. 2:26-cv-00556-LK FEDERAL RESPONDENTS' RETURN Noted for Consideration: March 9, 2026

INTRODUCTION

Petitioner's habeas petition should be denied for three reasons: (1) Petitioner is subject to mandatory detention while she is in removal proceedings; (2) Petitioner's Order of Release on Recognizance (OREC) was properly revoked and her re-detention comports with due process; and

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

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(3) Petitioner is not entitled to permanent injunctive relief prohibiting U.S. Immigration and Customs Enforcement (ICE) from re-detaining her or utilizing monitoring techniques if she is re-released.

FACTS

Petitioner is a native and citizen of Guatemala who illegally entered the United States on or about November 24, 2005, without being paroled or inspected. *See* Declaration of Deportation Officer Sheldon Benjamin (Benjamin Decl.) at ¶ 4. On November 24, 2005, the Department of Homeland Security (DHS) issued a Notice to Appear charging Petitioner with being removable from the United States pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) and placing Petitioner in removal proceedings. *Id.* at ¶ 6. Petitioner was released on an OREC the same day. *Id.*

While Petitioner's removal proceedings were pending, and she was at large in the United States on an OREC, she left the United States without notifying ICE or the immigration court. *Id.* at ¶ 7. Petitioner was ordered removed in absentia when she failed to appear for her immigration master hearing on February 22, 2006. *Id.* at ¶ 8.

Petitioner entered the United States illegally for a second time on June 13, 2019, without being paroled or inspected. *Id.* at ¶ 9. Petitioner was encountered by Border Patrol on June 16, 2019, and was arrested and held pursuant to Section 241 of the INA because she was subject to the final order of removal entered in 2006. *Id.* at ¶ 10. She was released three days later, on June 19, 2019, on another OREC and allowed to enroll in the Alternatives to Detention Program (ADP). *Id.* at ¶ 11.

On February 6, 2026, Petitioner reported to ICE Enforcement and Removal Operations (ERO) for her ATD check-in. *Id.* at ¶ 14. At that check-in, ERO discovered that Petitioner had a final order of removal from 2006. *Id.* ERO revoked Petitioner's OREC and issued a warrant of

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arrest and notice of detention. *Id.* The DHS also served Petitioner with a new Notice to Appear on February 6, 2026, charging her with being removable from the United States pursuant to Section 212(a)(6)(A)(i) of the INA. *Id.* at ¶ 16. Petitioner's removal proceedings remain pending and her next master hearing is scheduled for March 5, 2026. *Id.* at ¶ 17.

HABEAS RELIEF

Title 28 U.S.C. § 2241 provides district courts the authority to grant habeas relief "within their respective jurisdictions." To warrant a grant of habeas corpus, the Petitioner must prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n.20 (2020).

ARGUMENT

A. Petitioner is subject to mandatory detention during her removal proceedings.

Petitioner is subject to mandatory detention pursuant while her removal proceedings are pending. 8 U.S.C. § 1225(b), INA § 235; *see also Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *Zapata v. Chestnut*, 2025 WL 3687643, at *3-4 (E.D. Cal. Dec. 19, 2025). Petitioner is subject to mandatory detention pursuant to Section 1225(b)(2) because she is an applicant for admission who was previously released on an OREC, but whose OREC was revoked, a new Notice to Appear was issued, and Petitioner is now in removal proceedings. *See Buenrostro-Mendez*, 2026 WL 323330, at *6-7.

Applicants for admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by the Attorney General in her discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Id.* at 283.

In *Buenrostro-Mendez*, the Fifth Circuit recently held that noncitizens who entered without inspection and were later placed in removal proceedings remained "applicants for admission" subject to mandatory detention under Section 1225(b)(2)(A), even though they had previously been released from detention. The Fifth Circuit reversed the district court orders finding Section 1225(b) to be unlawful for certain aliens, explaining that Section 1225(b) establishes a categorical detention mandate that is not displaced by temporary release mechanisms such as parole or orders of recognizance. *Id.* at *7.

The reasoning in *Buenrostro-Mendez* demonstrates that an individual who entered without inspection remains an applicant for admission unless and until lawfully admitted. Thus, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b), INA § 235(b)(2)(A), and is subject to mandatory detention while her removal proceedings are pending.

B. Petitioner's re-detention comports with due process.

1. Substantive due process.

A new Notice to Appear was issued on February 6, 2026, and Petitioner was placed in removal proceedings, which remain pending at this time. Benjamin Decl. ¶¶ 16-17. ICE has a legitimate, non-punitive interest in Petitioner's detention while her removal proceedings are pending. *See Jennings*, 583 U.S. at 283.

For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United*

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States, 362 U.S. 217, 232-37 (1960). "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing Demore, 538 U.S. at 523); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

2. Procedural due process

Petitioner's re-detention is consistent with her due process rights. "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) (internal quotation marks omitted). This calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.* at 334-35.

First, Petitioner does not have a liberty interest in remaining on supervised release or participating in parole during her removal proceedings. Just because she was previously released on an OREC, does not mean that Petitioner now has a separate or heightened liberty interest in the continuation of her conditional release. Petitioner's release was always subject to conditions of release, and she knew that she could be re-detained. Accordingly, Petitioner cannot claim that the government promised her ongoing fBenjaminom.

"The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (quoting *Demore*, 538 U.S. at 522). As the Supreme Court has explained, "[i]n the

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exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523.

Second, the existing procedures for re-detention are constitutionally sufficient and the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal. Contrary to Petitioner's argument, she was not entitled to a pre-deprivation hearing to determine whether she is a flight risk or a danger to the community prior to her re-detention on February 6, 2026. There is no statutory or regulatory requirement that a noncitizen be provided with a pre-detention hearing before re-detention. Although courts in this District have held otherwise, neither the INA nor due process requires that noncitizens be given notice or a pre-detention hearing prior to being re-detained.

The Supreme Court has warned courts against reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, Inc., 435 U.S. 519, 524 (1978) (cleaned up)).

Respondents acknowledge that courts in this District have found that the revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). But these decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8) by improperly imposing Section (c)(8)'s requirements into the discretionary determination of revoking an OSUP in Section (c)(9). Both Sections provide that the decisions to

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release or revoke are discretionary, but Section (c)(8) includes language requiring the officer to decide that the alien "would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." In contrast, Section (c)(9) does not require such a determination and specifically provides that "release may be revoked at any time."

As such, this Court should not create a blanket due process requirement for every situation because due process is flexible. Petitioner is subject to mandatory detention, and an analysis of her potential flight risk or dangerousness would be immaterial and a pre-detention hearing would be futile.

Third, the Government has a strong interest in detaining Petitioner during her removal proceedings. As discussed above, "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Id.*

Thus, Petitioner's re-detention comports with procedural due process.

C. Petitioner is not entitled to permanent injunctive relief.

Petitioner's request to permanently enjoin ICE from re-detaining her during the pendency of her removal proceedings absent written notice and a re-detention hearing and enjoining ICE from using monitoring techniques, such as ankle monitors, if Petitioner is re-released should be denied. *See Torres v. Hermosillo*, 2026 WL 145715, at *8 (W.D. Wash. Jan. 20, 2026). Permanent injunctive relief can only be granted if "there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *See Torres v. Hermosillo*, 2026 WL 145715, at *8 (W.D. Wash. Jan. 20, 2026).

Petitioner has not demonstrated that there is more than a "mere possibility" that she would be re-detained. Petitioner has been detained for about one month and is currently in removal

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proceedings, with her next master hearing date scheduled in two days, on March 5, 2026. Benjamin Decl. ¶¶ 14-17. It is through these removal proceedings that an Immigration Judge may issue an order of removal for Petitioner, and ICE can effectuate such an order of removal when it receives one that is administratively final. Petitioner has not established that her release and re-detention is more than a mere possibility or that ICE's potential use of monitoring techniques is likely or would be arbitrary. Petitioner's request for permanent injunctive relief should be denied because she has failed to make the proper showing for such relief.

CONCLUSION

Accordingly, Petitioner's habeas petition should be denied and dismissed without an evidentiary hearing.

DATED this 3rd day of March, 2026.

Respectfully submitted,

s/ Kristin B. Johnson
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