

District Judge David G. Estudillo
Magistrate Judge Michelle L. Peterson

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

<p>A.C.J.,</p> <p style="text-align: center;">v.</p> <p>LAURA HERMOSILLO, <i>et al.</i>,</p>	<p>Petitioner,</p> <p>Respondents.</p>	<p>Case No. 2:25-cv-02486-DGE-MLP</p> <p>FEDERAL RESPONDENTS' RETURN MEMORANDUM</p> <p>Noted for Consideration: December 26, 2025</p>
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I. INTRODUCTION

Petitioner A.C.J., a citizen of Guatemala with no legal status in the United States, is currently detained by the Department of Homeland Security (DHS) at the Northwest ICE Processing Center (NWIPC). Pursuant to this Court's Order (Dkt. 7), Federal Respondents submit the following factual background as provided through the Declaration of Deportation Officer Rita Soraghan (Soraghan Decl.) and contained in Petitioner's immigration records,¹ as well as an explanation of relevant detention authority. Federal Respondents do not request an evidentiary hearing in this case.

¹ At the time of this writing, Federal Respondents did not have access to Petitioner's complete Alien File.

<p>FEDERAL RESPONDENTS' RETURN MEMORANDUM [Case No. 2:25-cv-02486-DGE-MLP] - 1</p>	<p>UNITED STATES ATTORNEY 700 STEWART STREET, SUITE 5220 SEATTLE, WASHINGTON 98101 (206) 553-7970</p>
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1 **II. LEGAL STANDARD**

2 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
3 petitions. To succeed on a habeas petition, Petitioner “must show [he] is in custody in violation
4 of the Constitution or laws or treaties of the United States.” *Doe v. Bostock*, No. C24-0326-JLR-
5 SKV, 2024 WL 3291033, at *5 (W.D. Wash. Mar. 29, 2024), report and recommendation
6 adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing 28
7 U.S.C. § 2241). Because habeas proceedings are civil in nature, the “[p]etitioner ‘bears the burden
8 of proving that he is being held contrary to law, . . . [and] he must satisfy his burden of proof by
9 a preponderance of the evidence.’” *Aditya W. H. v. Trump*, No. 25-cv-1976, 2025 WL 1420131,
10 at *7 (D. Minn. May 14, 2025) (quoting *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn.
11 2023) (citations omitted).

12 **III. DETENTION AUTHORITIES**

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

14 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
15 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
16 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
17 591 U.S. 103, 106 (2020). Section 1225 applies to “applicants for admission” to the United States,
18 who are defined as “[a]n alien present in the United States who has not been admitted or who
19 arrives in the United States (whether or not at a designated port of arrival and including an alien
20 who is brought to the United States after having been interdicted in international or United States
21 waters).” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those
22 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
23 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*,
24 29 I&N Dec. 216 (BIA 2025).

1 An applicant for admission is subject to expedited removal if, as relevant here, the
2 applicant (1) is inadmissible under 8 U.S.C. § 1182(a)(7)(C) (noncitizens without valid entry
3 documents); (2) has not “been physically present in the United States continuously for the 2-year
4 period immediately prior to the date of the determination of inadmissibility”; and (3) is among
5 those whom the Secretary of Homeland Security has designated for expedited removal.
6 §§1225(b)(1)(A)(i), (iii)(I)–(II).² Once “an immigration officer determines” that a designated
7 applicant is inadmissible under 8 U.S.C. § 1182(a)(7)(C) “the officer [must] order the alien
8 removed from the United States without further hearing or review.” §1225(b)(1)(A)(i).

9 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
10 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
11 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). If
12 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
13 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
14 (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
15 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
16 removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8
17 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
18 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under
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21 ² The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal
22 under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to “the
23 fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).
24 The notice thus enables the Department of Homeland Security (“DHS”) “to place in expedited removal, with limited
exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been
admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration
officer, that they have been physically present in the United States continuously for the two-year period immediately
preceding the date of the determination of inadmissibility,” who were not otherwise covered by prior designations.
Id., at 8139-40.

1 Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.
2 520, 524 (BIA 2011).

3 The sole means of release from detention pursuant to § 1225(b) is temporary parole ‘for
4 urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S.
5 at 283. This parole terminates automatically at the expiration of the time for which parole was
6 authorized, or upon service of a charging document for either expedited removal proceedings
7 under § 1225(b) or removal proceedings under § 1229a. 8 C.F.R. 212.5(e)(1); (2)(i). Upon
8 termination of parole, the applicant reverts to the status that he or she had at the time of parole.
9 *See id.*

10 **B. Revocation of Discretionary Release from Detention**

11 8 C.F.R. § 1236.1(c)(8) provides that “[a]ny officer authorized to issue a warrant of arrest
12 may, in the officer’s discretion, release an alien . . . provided that the alien must demonstrate to
13 the satisfaction of the officer that such release would not pose a danger to property or persons,
14 and that the alien is likely to appear for any future proceeding.” Section 236.1(c)(9) provides for
15 the revocation of such release: “When an alien who, having been arrested and taken into custody,
16 has been released, such release may be revoked at any time in the discretion of the district director,
17 acting district director, deputy district director, assistant district director for investigations,
18 assistant district director for detention and deportation, or officer in charge (except foreign), in
19 which event the alien may be taken into physical custody and detained.”

20 There is no statutory or regulatory requirement for a hearing before an individual is re-
21 detained, and the Supreme Court has warned courts against reading additional procedural
22 requirements into the Immigration and Nationality Act. *See Johnson v. Arteaga-Martinez*, 596
23 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
24 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural

1 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
2 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).
3 Furthermore, DHS is not restricted from rearresting noncitizens absent a change in circumstance.
4 *See Matter of Sugay*, 17 I&N. Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 280 F.
5 Supp. 3d 1168, 1197 (N.D. Cal. 2017). (“[T]he district court never held that *Sugay* requires these
6 hearings.”). Other courts have recognized that *Sugay*’s dicta is not “binding on ICE.” *Bermudez*
7 *Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19 (S.D.N.Y. Dec. 27, 2018).

8 Federal Respondents acknowledge that district courts have recently decided that the
9 revocation of an order of recognizance (OREC) requires a pre-detention hearing to determine if
10 that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No.
11 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these
12 decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.*
13 (imposing a determination set forth in Section (c)(8) into the discretionary determination of
14 revoking an OSUP in Section (c)(9)). Both Sections provide that the decisions to release or revoke
15 are discretionary. But Section 1231(c)(8) includes language requiring the officer to decide that the
16 alien “would not pose a danger to property or persons, and that the alien is likely to appear for
17 any future proceeding.” In contrast, Section 1231(c)(9) does not require such a determination and
18 specifically provides that “release may be revoked at any time.”

19 IV. FACTUAL BACKGROUND

20 Petitioner is a citizen of Guatemala, with no legal status in the United States. Soraghan
21 Decl., ¶¶ 3,4, 22; Declaration of Katherine G. Collins, Exh. D, Form I-213. On June 4, 2016, U.S.
22 Border Patrol (USBP) encountered Petitioner in the United States, near Douglas, Arizona.
23 Soraghan Decl., ¶ 4. USBP determined Petitioner entered the United States from Mexico without
24 being inspected, admitted, or paroled as an unaccompanied minor. *Id.* That same day, Petitioner

1 was served a Notice to Appear, charging her are removable under INA § 212(a)(6)(A)(i). *Id.*, ¶ 5.
2 Given Petitioner’s age at the time, Petitioner was released from custody to the custody of her
3 uncle *Id.*, ¶ 6. DHS placed Petitioner on an Order of Release on Recognizance (OREC). *Id.*, ¶ 7.

4 On March 13, 2017, given her entry as an unaccompanied minor, Petitioner filed an
5 application for relief with U.S. Citizenship and Immigration Services (“CIS”). *Id.*, ¶ 8. On
6 December 5, 2017, over DHS objection, the Immigration Judge granted Petitioner’s motion to
7 administratively close their removal proceedings. *Id.*, ¶ 8; Collins Decl., Exh. A (IJ Order Admin.
8 Close). Thereafter, on April 20, 2020, and again on June 4, 2021, Petitioner failed to report to
9 check-in appointments with Immigration Customs Enforcement (ICE), Enforcement and
10 Removal Operations (ERO). Soraghan Decl., ¶¶ 13-14. On August 20, 2025, the Immigration
11 Judge granted DHS’s Motion to Recalendar Petitioner’s removal proceedings. *Id.*, ¶ 17; Collins
12 Decl., Exh. B (IJ Order Recalendar).

13 On December 3, 2025, ICE ERO located and detained Petitioner based on her being a
14 citizen of Guatemala who was not in possession of immigration documents which would permit
15 her to remain in the United States. Soraghan Decl., ¶ 18; Collins Decl., Exhs. C (I-200), D (I-
16 213). That same day, ICE transferred Petitioner to NWIPC in Tacoma, Washington. Soraghan
17 Decl., ¶ 19. On December 4, 2025, Petitioner’s OREC was cancelled. ¶ 20, Collins Decl., Exh. E
18 (ICE Memo). Petitioner’s asylum application remains pending with USCIS, which has original
19 jurisdiction over that application. *Id.*, ¶ 22. ICE has requested expedited processing of that
20 application. *Id.*

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1 DATED this 18th day of December, 2025

2 Respectfully submitted,

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16 *I certify that this memorandum contains 1,584*
17 *words, in compliance with Local Civil Rules*