District Judge Jamal N. Whitehead

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

EVANGELINA HERRERA GOMEZ, Petitioner, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:25-cv-02642-JNW FEDERAL RESPONDENTS'[1] RETURN Noted For Consideration: January 12, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Evangelina Herrera Gomez at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In 2018, U.S. Customs and Border Protection ("CBP") encountered Petitioner shortly after she unlawfully entered the United States. CBP released Petitioner on an order of recognizance ("OREC"). In October 2025, ICE learned that the notice to appear served on Petitioner by CBP – the document that initiates removal proceedings – was never filed with the immigration court. ICE re-detained

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

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Petitioner on December 12, 2025, pursuant to an arrest warrant, and ICE issued a new notice to appear that officially placed her in removal proceedings.

Petitioner asserts that her re-detention without written notice and a pre-detention hearing before a neutral decisionmaker violates due process. Pet., ¶¶ 41-44. She asks this Court to order her release and "permanently" enjoin her "re-detention during the pendency of her removal proceeding absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that she is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks." *Id.*, Prayer for Relief.

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

II. BACKGROUND

A. Petitioner Evangelina Herrera Gomez

Petitioner is a citizen of Mexico who entered the United States without inspection or parole on or around September of 2023 and was apprehended shortly thereafter by U.S. Customs and Border Protection ("CBP"). Pet., ¶¶ 22-23; Benjamin Decl., ¶¶ 3-4. CBP issued Petitioner a notice to appear charging her as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Benjamin Decl., ¶ 6.; Lambert Decl., Ex. A, 2023 Notice to Appear. CBP released her on OREC, imposing reporting requirements and other conditions, including enrollment in the Alternatives to Detention program. Benjamin Decl., ¶ 5; Lambert Decl., Ex. B, OREC.

On or about March 3, 2024, Petitioner filed an application for relief from removal with U.S. Citizenship and Immigration Services. Benjamin Decl., ¶ 7.

In October 2025, ICE learned that Petitioner's notice to appear issued in 2023 had not been filed in immigration court and removal proceedings had not been commenced. Benjamin Decl., ¶ 9.

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On December 11, 2025, ICE was notified that Petitioner had changed her address without informing ICE in violation of her OREC. Benjamin Decl., ¶ 10. The following day, ICE arrested Petitioner and served her with a new notice to appear. Benjamin Decl., ¶ 11; Lambert Decl., Ex. C, Warrant for Arrest; Ex. D, Form I-213; Ex. E, 2025 Notice to Appear. ICE subsequently filed this notice to appear with the immigration court. Benjamin Decl., ¶ 11. ICE transported Petitioner to the Northwest ICE Processing Center, where she is currently detained. Benjamin Decl., ¶ 12. On January 5, 2026, ICE revoked Petitioner's OREC for not comply with conditions of her release and served Petitioner with a copy of the revocation. Benjamin Decl., ¶ 13. Petitioner is scheduled to appear for her initial master calendar hearing on January 13, 2026. Benjamin Decl., ¶ 14.

B. Legal Background

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

Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture, 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

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the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (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 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 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 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

The sole means of release from detention pursuant to Section 1225(b) is temporary parole '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.*

C. Revocation of Discretionary Release from Detention

"Any 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." 8 C.F.R. § 1236.1(c)(8). ICE retains discretion to revoke such a 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.

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8 C.F.R. § 1236.1(c)(9).

III. ARGUMENT

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

Petitioner is subject to mandatory detention under Section 1225(b) because she is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). 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 clearly and beyond a doubt entitled to be admitted[.]" 8 U.S.C. § 1225(b)(2)(A). The Immigration and Nationality Act ("INA") specifies that "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this Act an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that she is a noncitizen who is present in the United States without having been admitted. Thus, she is an "applicant for admission" and subject to mandatory detention under Section 1225(b).

A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was not required prior to her arrest in December of 2025. There is no statutory or regulatory requirement for a hearing prior to re-detention, and 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 *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

Federal Respondents acknowledge that district courts have recently found that the revocation of 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*, No. 2:25-cv-1192, 2025 WL

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2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination set forth in Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)). These decisions err by incorporating Section (c)(8)'s requirements into Section (c)(9). Both Sections provide that the decisions to release or revoke are discretionary. But Section 1236.1(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 1236.1(c)(9) does not require such a determination and specifically provides that "release may be revoked at any time." Here, Petitioner is subject to mandatory detention. Thus, analysis of her potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

Due process does not mandate a pre-detention hearing here. Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, "[t]he 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 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the 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

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Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523.

The Government has a heightened interest in the immigration detention context. *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "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." *Rodriguez Diaz*, 53 F.4th at 1208. Accordingly, due process does not require a pre-deprivation hearing in all circumstances where individuals are detained after being released, including for Petitioner here.

B. Even if this Court were to enjoin Petitioner's re-detention without a pre-deprivation hearing, due process does not require the Government to bear the burden of proof at such a hearing.

The Supreme Court has never required the Government to justify immigration detention by clear and convincing evidence. Even if this Court should order Petitioner's release, this Court should not grant her request to enjoin her re-detention "absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that each Petitioner is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks." Pet., Prayer for Relief. The Constitution does not require the government to bear the burden of proof at a pre-deprivation hearing. Simply put, the Supreme Court has *always* affirmed the constitutionality of detention pending removal proceedings, notwithstanding that the government has *never* borne the burden to justify such detention by clear and convincing evidence. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) ("We are aware of no Supreme Court case placing the burden on the

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government to justify the continued detention of [a noncitizen], much less through an elevated 'clear and convincing' showing."). In fact, even when considering a noncitizen subjected to potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court has placed the burden on the noncitizen, as opposed to the Government, to justify release. *See Zadvydas v. Davis,* 533 U.S. 678, 701(2001). Thus, the Court should not order ICE to bear the burden of proof at a pre-deprivation, if one were to be ordered. At most, the Government should be required to demonstrate dangerousness or flight risk by preponderance of the evidence in line with the immigration officer's initial determination. 8 C.F.R. § 1236.1(c)(8).

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

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

CONCLUSION

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

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DATED this 5th day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 2,345 words, in compliance with the Local Civil Rules.