

District Judge Kymberly K. Evanson

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

MIHAIL PETROV,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:25-cv-02647-KKE

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
January 12, 2026.

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Petitioner Mihail Petrov at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In 2023, U.S. Customs and Border Protection (“CBP”) encountered Petitioner shortly after he unlawfully entered the United States for a second time. CBP released Petitioner on an order of recognizance (“OREC”), subject to reporting requirements in accordance with being enrolled in the Alternatives to Detention (“ATD”) program. Between October 2024 and November 2025,

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, Enforcement and Removal Operations, 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 had nine violations of his reporting requirements. As a result of these violations,
2 Petitioner was taken back into custody and terminated from the ATD program. ICE re-detained
3 Petitioner on December 11, 2025, pursuant to an arrest warrant.

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

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

13 **II. BACKGROUND**

14 **A. 8 U.S.C. § 1225(b)**

15 Petitioner is an applicant for admission who is subject to mandatory detention pursuant to
16 8 U.S.C. § 1225(b). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Applicants for
17 admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially
18 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation,
19 and certain other aliens designated by the Attorney General in her discretion. Separately, section
20 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered
21 by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*,
22 583 U.S. 281, 287 (2018).

23 Congress has determined that all aliens subject to section 1225(b) are subject to mandatory
24 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means

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

7 **B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A)**

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

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

20 **C. Revocation of Discretionary Release from Detention**

21 “Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release
22 an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such
23 release would not pose a danger to property or persons, and that the alien is likely to appear for
24 any future proceeding.” 8 C.F.R. § 1236.1(c)(8). Section 236.1(c)(9) provides for the revocation

1 of such release: “When an alien who, having been arrested and taken into custody, has been
2 released, such release may be revoked at any time in the discretion of the district director, acting
3 district director, deputy district director, assistant district director for investigations, assistant
4 district director for detention and deportation, or officer in charge (except foreign), in which event
5 the alien may be taken into physical custody and detained.”

6 **D. Petitioner Mihail Petrov**

7 Petitioner is a native of Moldova and citizen of Romania who entered the United States
8 without inspection on at least two occasions and was apprehended shortly thereafter by U.S.
9 Customs and Border Protection (“CBP”). Pet., ¶ 1; Declaration of Deportation Officer Joseph B.
10 Carnevale (“Carnevale Decl.”), ¶ 3.

11 Petitioner’s first known entry was without inspection on or about August 22, 2023, near
12 Blaine, Washington and he was apprehended by DHS officers shortly after such entry. Carnevale
13 Decl. ¶ 3. Upon inspection at the time of apprehension on August 22, 2023, DHS determined that
14 Petitioner had entered without inspection, did not enter at a designated port of entry, and did not
15 have a valid entry document. Thus, Petitioner was processed for expedited removal under Section
16 238 of the Immigration and Nationality Act (“INA”). *Id.* ¶ 4. Petitioner claimed fear of return to
17 Romania as well as his then-country of residence, France. *Id.* ¶ 5. Petitioner claimed to have
18 resided in France for approximately 5 years prior to entering the United States. *Id.* Petitioner
19 claimed he had only been in Canada for approximately one week and did not want to seek asylum
20 in Canada. *Id.* Petitioner was scheduled for a credible fear interview with the United States
21 Citizenship and Immigration Services (“USCIS”). *Id.*

22 On September 6, 2023, Petitioner explained that he wanted to withdraw his claim of fear
23 and be returned to Canada. *Id.* ¶ 6. He was allowed to do so and was returned to Canada on
24 November 22, 2023. *Id.* Five days later, on November 28, 2023, Petitioner attempted to enter the

1 United States from Canada again by coming to the Port of Entry at Lancaster, Minnesota. *Id.* ¶ 7.
2 Upon inspection, it was determined that Petitioner did not possess a valid document to enter the
3 United States. *Id.* Thus, Petitioner was again processed for expedited removal under INA § 238.
4 Petitioner claimed fear of return to Moldova, Romania, and France. *Id.*

5 On November 29, 2023, Petitioner was released from DHS custody with various
6 supervision requirements under the Alternatives to Detention (“ATD”) program. *Id.* ¶ 8; Morris
7 Decl., Ex. 1 (OREC). On November 30, 2023, Petitioner had a Credible Fear Interview with
8 USCIS. It was determined that Petitioner did not have credible fear. Petitioner requested review
9 of this decision by an immigration judge. Carnevale Decl. ¶ 9. On December 15, 2023, the
10 immigration judge vacated the negative credible fear finding by USCIS. *Id.* ¶ 10. In other words,
11 the immigration judge found that Petitioner has a credible fear of return to either Moldova,
12 Romania, or France. *Id.* DHS therefore initiated immigration proceedings under INA § 240. *Id.*

13 Accordingly, ICE issued Petitioner a notice to appear charging him as removable pursuant
14 to 8 U.S.C. § 1182(a)(7)(A)(i)(I). Carnevale Decl., ¶ 11.; Morris Decl., Ex. 2 (Notice to Appear).
15 Petitioner has since filed a Form I-589 with the immigration court, which is an application for
16 asylum, withholding of removal, and protection under the Convention Against Torture. Carnevale
17 Decl. ¶ 11. This application is currently pending. *Id.*

18 Between October 2024 and November 2025, Petitioner had nine reporting requirements,
19 violating his ATD requirements. *Id.* ¶ 12. As a result of these nine violations, Petitioner was taken
20 back into DHS custody on December 11, 2025, and he was terminated from the ATD program.
21 *Id.* ¶ 13; Morris Decl., Ex. 4 (Arrest Warrant). Petitioner is currently detained at the Northwest
22 ICE Processing Center pending the adjudication of his Form I-589. Carnevale Decl. ¶ 14.
23 Petitioner is currently represented by counsel in his immigration court proceedings. *Id.*

24

1 **III. LEGAL STANDARD**

2 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
3 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
4 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
5 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
6 day.” *Thuraissigiam*, 591 U.S. at 125 n. 20. Title 28 U.S.C. § 2241 provides district courts with
7 jurisdiction to hear federal habeas petitions.

8 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
9 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
10 § 2241(c)(3); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

11 **IV. ARGUMENT**

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

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

23 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous
24 was not required prior to his arrest in December of 2025. There is no statutory or regulatory

1 requirement for a hearing prior to re-detention, and the Supreme Court has warned courts against
2 reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596
3 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
4 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural
5 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
6 *Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

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

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

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

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

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

24 No Supreme Court case has ever required the Government to justify immigration
detention by clear and convincing evidence. Even if this Court should order Petitioner’s release,

1 this Court should not grant his request to enjoin his re-detention “absent written notice and a
2 hearing prior to re-detention where Respondents must prove by clear and convincing evidence
3 that she [sic] is a flight risk or danger to the community and that no alternatives to detention would
4 mitigate those risks.” Pet., Prayer for Relief.

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

19 In addition to placing a heightened burden on the Government, Petitioner also seeks to
20 unnecessarily require the Government to demonstrate that no “alternatives to detention” would
21 mitigate the danger or risk of flight at a pre-deprivation hearing. Pet., Prayer for Relief. But even
22 for criminal alien detainees subjected to prolonged mandatory detention, the Ninth Circuit did not
23 expand the procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which is
24 considered “the high-water mark of procedural protections required by due process,” to include a

1 consideration of alternatives to detention for those found to be a danger to their community.
2 *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

3 While due process does not require a pre-deprivation hearing, if this Court should find
4 otherwise, the Government should only be required to demonstrate that Petitioner is a danger to
5 the community or a flight risk by a preponderance of the evidence, consistent with 8 C.F.R. §
6 1236.1(c)(8).

7 **V. CONCLUSION**

8 For the foregoing reasons, this Court should deny the Petition.

9
10 DATED this 5th day of January, 2026.

11 Respectfully submitted,

12 CHARLES NEIL FLOYD
13 United States Attorney

14 *s/ Alixandria K. Morris*
15 ALIXANDRIA K. MORRIS, TX No. 24095373
16 Assistant United States Attorney
17 United States Attorney's Office
18 Western District of Washington
19 700 Stewart Street, Suite 5220
20 Seattle, Washington 98101
21 Phone: 206-553-7970
22 Fax: 206-553-4067
23 Email: alixandria.morris@usdoj.gov

24 *Attorneys for Federal Respondents*

I certify that this memorandum contains 2,772 words, in compliance with the Local Civil Rules.