

1 Declaration of Eddie Wang, M.D. (“Dr. Wang Decl.”) and the Declaration of Jennifer Wong
2 (“Wong Decl.”), with accompanying exhibits. Federal Respondents do not believe an evidentiary
3 hearing is necessary.

4 II. BACKGROUND

5 A. Wekeslei Junio da Silva

6 Petitioner is a native and citizen of Brazil who entered the United States without
7 inspection, admission, or parole after crossing the border near San Luis, Arizona on May 4, 2023.
8 Hubbard Decl. ¶¶ 3-4; Wong Decl. at Ex. 1 (Form I-213). U.S. Customs and Border Patrol
9 (“CBP”) issued a Notice to Appear for Petitioner and charged him as removable under INA §
10 212(a)(6)(A)(i). Hubbard Decl. ¶ 5; Wong Decl. at Ex. 2 (Notice to Appear). However, due to a
11 lack of space, CBP released Petitioner into the United States on an Order of Recognizance
12 (“OREC”), pending his removal proceedings in Chelmsford, Massachusetts. Hubbard Decl. ¶ 5;
13 Wong Decl. at Ex. 3 (OREC).

14 On November 27, 2024, Petitioner appeared for his initial master calendar hearing where
15 he requested and was granted a continuance to retain counsel. Hubbard Decl. ¶ 6. On April 21,
16 2025, Petitioner, having retained counsel, filed an application for relief with the immigration
17 court. *Id.* ¶ 7. On August 23, 2025, Petitioner filed an updated address form with the immigration
18 court, continuing to show his intended residence in Massachusetts. *Id.* ¶ 8.

19 On December 8, 2025, CBP encountered Petitioner following a traffic stop of a vehicle
20 with Massachusetts plates conducted by state law enforcement within the Interstate 90 corridor
21 near St. Regis, Montana, an area identified for narcotics and human smuggling activities. *Id.* ¶
22 9. Petitioner told CBP that he was present in the United States without documentation to enter
23 or remain and that he was present in Montana for employment purposes. Hubbard Decl. ¶ 9;
24 Wong Decl. at Ex. 4 (Notice of Violation and Order). CBP determined Petitioner posed a flight

1 risk if released and he was taken into custody. Hubbard Decl. ¶ 9. On the same day, Petitioner
2 was advised of the revocation of his OREC for failing to update his address with the court,
3 constituting a violation of his release. Hubbard Decl. ¶ 10; *see also* Wong Decl. at Ex. 1.
4 Petitioner was provided an informal interview, but he declined to provide a statement in
5 response to the OREC revocation. Hubbard Decl. ¶ 10.

6 On December 9, 2025, Petitioner was temporarily detained in Spokane, Washington,
7 before being transported on December 10, 2025, to the Northwest ICE Processing Center
8 (“NWIPC”) in Tacoma, Washington. *Id.* ¶ 11.

9 On January 5, 2026, ERO issued Petitioner a memorandum concerning his OREC
10 revocation. *Id.* ¶ 12. Petitioner is scheduled to appear for a master calendar hearing before the
11 Tacoma Immigration Court on January 15, 2025. *Id.* ¶ 13. Petitioner remains detained under 8
12 U.S.C § 1225, or INA § 235(b). *See id.* ¶ 13.

13 **B. Legal Background**

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 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
2 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
3 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
4 the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed
5 from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
6 (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
7 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
8 removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8
9 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
10 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under
11 Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.
12 520, 524 (BIA 2011).

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

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 III. JURISDICTION AND STANDARD OF REVIEW

7 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
8 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
9 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
10 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
11 day.” *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).

12 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
13 petitions. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that
14 his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See*
15 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004); *Snook v.*
16 *Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

17 IV. ARGUMENT

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

19 The plain language of the statute is clear: Petitioner is subject to mandatory detention
20 under Section 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I.
21 & N. Dec. 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory detention of “an alien
22 who is an applicant for admission, if the examining immigration officer determines that an alien
23 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C.
24 § 1225(b)(2)(A). The Immigration and Nationality Act (“INA”) specifies that “[a]n alien present

1 in the United States who has not been admitted . . . shall be deemed for purposes of this Act an
2 applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that he is a noncitizen
3 who is present in the United States without having been admitted. Thus, he is an “applicant for
4 admission” and subject to mandatory detention under Section 1225(b).

5 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was
6 not required prior to his arrest in December of 2025. There is no statutory or regulatory
7 requirement for a hearing prior to re-detention, and the Supreme Court has warned courts against
8 reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596
9 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
10 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural
11 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
12 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

13 Federal Respondents acknowledge that district courts have recently found that the
14 revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a
15 flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-01192,
16 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously
17 conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination
18 set forth in Section (c)(8) into the discretionary determination of revoking an OSUP in Section
19 (c)(9)). These decisions err by incorporating Section (c)(8)’s requirements into Section (c)(9). Both
20 Sections provide that the decisions to release or revoke are discretionary. But Section 1236.1(c)(8)
21 includes language requiring the officer to decide that the alien “would not pose a danger to
22 property or persons, and that the alien is likely to appear for any future proceeding.” In contrast,
23 Section 1236.1(c)(9) does not require such a determination and specifically provides that “release
24 may be revoked at any time.” Here, Petitioner is subject to mandatory detention. Thus, analysis of

1 his potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

2 Federal Respondents recognize the “weighty liberty interests implicated by the
3 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-08674, 2021 WL 3727614, at
4 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
5 from immigration detention have a protected liberty interest in remaining out of custody, the
6 weight of that liberty must be considered in the broader picture of the immigration system, which
7 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
8 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
9 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that
10 would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
11 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has
12 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
13 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426
14 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during
15 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
16 538 U.S. at 523.

17 The Government has a heightened interest in the immigration detention context.
18 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
19 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
20 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
21 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to
22 determining whether removable aliens must be released on bond during the pendency of removal
23 proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208.

1 Accordingly, due process does not require a pre-deprivation hearing in all circumstances
2 where individuals are detained after being released, including for Petitioner here.

3 **B. Petitioner fails to demonstrate that he requires immediate release for non-carceral
4 medical care.**

5 Petitioner's claim that he requires non-carceral care for his ankylosing spondylitis is
6 without merit. He is able receive the necessary care for this medical condition and the relevant
7 prescribed medications through ICE Health Service Corps ("IHSC").

8 The NWIPC is a level 4 facility, meaning that it can provide a higher level of medical
9 care. Dr. Wang Decl. ¶ 4. Medical, dental, and mental health care at NWIPC is provided by the
10 IHSC, which comprises of a multidisciplinary workforce consisting of U.S. Public Health
11 Service Commissioned Corps officers, federal civil servants, and contract health professionals.

12 *Id.* The medical clinic includes family medicine and emergency medicine physicians, physician
13 aids, advanced nurse practitioners, nurses, record technicians, pharmacists and pharmacy
14 technicians, psychiatrists and behavioral health specialists, and dentists and dental technicians.

15 *Id.* NWIPC can manage patients with complex medical issues and collaborates with multiple
16 nearby emergency departments that can assist in assessing critical patients and hospitalize
17 unstable patients. *Id.* NWIPC also has collaborative agreements with local specialty services
18 that cover all aspects of medical specialties. *Id.*

19 IHSC provides professional telephonic and video interpreter services for patient care and
20 requires their use whenever a clinician does not share the patient's preferred language. *Id.* ¶ 5.

21 Urgent care is not delayed while interpreter services are arranged. *Id.* IHSC can provide
22 necessary care for ankylosing spondylitis and provide prescribed medications. *Id.* ¶ 7. IHSC has
23 specifically approved Petitioner's medications. *Id.* If referral to a specialist is required, IHSC
24

1 will be able to refer Petitioner. *Id.* IHSC also has a Portuguese interpreter available and
2 anticipates being able to provide interpretation as needed. *Id.* ¶ 8.

3 Further, Petitioner presents no evidence that the IHSC is unable to provide the necessary
4 care for his condition. Based on the declaration of Dr. Wang, which demonstrates that Petitioner
5 is able to receive adequate medical care while in custody, and absent any evidence from
6 Petitioner that shows otherwise, Petitioner's claim fails.

7 **V. CONCLUSION**

8 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
9 the Petition and dismiss this matter. This Court should not order that Petitioner be released.

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

12 Respectfully submitted,

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I certify that this memorandum contains 2,436 words, in compliance with the Local Civil Rules.