

Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

S.S. et. al.,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02684-MLP

FEDERAL RESPONDENTS'¹ RETURN

**Noted for consideration:
January 12, 2026**

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioners S.S., Q.F., and I.R. at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In December 2023, U.S. Border Patrol("USBP") encountered Petitioners shortly after they unlawfully entered the United States and issued them Notices to Appear because they were inadmissible. USBP released Petitioners on orders of recognizance ("OREC") due to a lack of bedspace at that time. On December 14, 2025, ICE detained Petitioners after multiple violations of alternatives to detention.

Petitioners assert that re-detention without written notice and a pre-detention hearing before a neutral decisionmaker violates due process. Pet., ¶¶ 32-33. They ask this Court to order

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

1 release and “permanently” enjoin “re-detention during the pendency of their removal proceeding
2 absent written notice and a hearing prior to re-detention where Respondents must prove by clear
3 and convincing evidence that she is a flight risk or danger to the community and that no alternatives
4 to detention would mitigate those risks.” *Id.*, Prayer for Relief.

5 This Court should deny the relief sought here. Petitioners are subject to mandatory
6 detention pursuant to 8 U.S.C. § 1225(b).

7 **II. BACKGROUND**

8 **A. Petitioner S.S.**

9
10 Petitioner S.S. is a citizen of Afghanistan who entered the United States without inspection
11 or parole in December of 2023 and was apprehended shortly thereafter by USBP. Pet., ¶¶ 1, 16-
12 18; Decl. Ruby., ¶¶ 4-5. USBP issued S.S. a notice to appear charging him as removable pursuant
13 to 8 U.S.C. § 1182(a)(6)(A)(i). Decl. Ruby., ¶ 5.; Steveson Decl., Ex. A, 2023 Notices to Appear.
14 USBP released him on OREC, and he was subsequently enrolled in the Alternatives to Detention
15 (“ATD”) program. Decl. Ruby., ¶ 4-5.

16
17 On or about December 6, 2024, S.S. filed an application for relief from removal with the
18 Immigration Court. Decl. Ruby., ¶ 7. S.S. also had several ATD violations. Decl. Ruby., ¶¶ 9-10,
19 12.

20 On December 14, 2025, ICE encountered S.S. in Gresham, Oregon. Steveson Decl., Exh.
21 B, Form I-213s; Decl. Ruby., ¶ 14. ICE conducted record checks, which showed the ATD
22 violations. *Id.* ICE took S.S. into custody and he was transferred to the Northwest ICE Processing
23 Center. Petitioner S.S. is scheduled to appear for her initial master calendar hearing on January
24 14, 2026. Decl. Ruby., ¶ 16.

B. Petitioner I.R.

Petitioner I.R. is a citizen of Afghanistan who entered the United States without inspection or parole on or around December of 2023 and was apprehended shortly thereafter by USBP. Pet., ¶¶ 1, 16-18; Decl. Ruby., ¶¶ 18. USBP issued I.R. a notice to appear charging him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Decl. Ruby., ¶ 19.; Steveson Decl., Ex. A, 2023 Notices to Appear. USBP released him on OREC, and he was subsequently enrolled in the ATD program. Decl. Ruby., ¶ 19, 21.

On or about December 6, 2024, I.R. filed applications for relief from removal with the Immigration Court. Decl. Ruby., ¶ 24. I.R. had several violations of ATD. Decl. Ruby., ¶¶ 22-23, 25-27.

On December 14, 2025, ICE encountered I.R. in Gresham, Oregon. Steveson Decl., Exh. B, Form I-213s; Decl. Ruby., ¶ 29. ICE had conducted records checks, which showed the ATD violations. *Id.* ICE took I.R. into custody and he was transferred to the Northwest ICE Processing Center. Petitioner is scheduled to appear for her initial master calendar hearing on January 14, 2026. Decl. Ruby., ¶ 31.

C. Petitioner Q.F.

Petitioner Q.F. is a citizen of Afghanistan who entered the United States without inspection or parole in December of 2023 and was apprehended shortly thereafter by USBP. Pet., ¶¶ 1, 16-18; Decl. Ruby., ¶¶ 32-33. USBP issued Q.F. a notice to appear charging him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Decl. Ruby., ¶ 34.; Steveson Decl., Ex. A, 2023 Notices to Appear. USBP released him on OREC, and he was subsequently enrolled in the ATD program. Decl. Ruby., ¶ 34-36.

1 On or about December 6, 2024, Q.F. filed applications for relief from removal with the
2 Immigration Court. Decl. Ruby., ¶ 38. Q.F. had several violations of ATD. Decl. Ruby., ¶¶ 37,
3 39-41.

4 On December 14, 2025, ICE encountered Q.F. in Gresham, Oregon. Steveson Decl., Exh.
5 B, Form I-213s; Decl. Ruby., ¶ 42. ICE conducted record checks, which showed the ATD
6 violations. *Id.* ICE took Q.F. into custody and he was transferred to the Northwest ICE Processing
7 Center. Decl. Ruby., ¶ 43. Petitioner Q.F. is scheduled to appear for her initial master calendar
8 hearing on January 14, 2026. Decl. Ruby., ¶ 44.

9
10 **B. Legal Background**

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

23 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if
24 a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
25 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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1 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
2 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
3 (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
4 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal
5 proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. §
6 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019).
7 Ultimately, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or removal
8 under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

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

17 18 **C. Revocation of Discretionary Release from Detention**

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

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24 When an alien who, having been arrested and taken into custody, has been released,
25 such release may be revoked at any time in the discretion of the district director,
26 acting district director, deputy district director, assistant district director for
27 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.

1 8 C.F.R. § 1236.1(c)(9).

2 **IV. ARGUMENT**

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

4 Petitioners are subject to mandatory detention under Section 1225(b) because they are
5 applicants for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Section
6 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for admission, if the
7 examining immigration officer determines that an alien seeking admission is not clearly and
8 beyond a doubt entitled to be admitted[.]” 8 U.S.C. § 1225(b)(2)(A). The Immigration and
9 Nationality Act (“INA”) specifies that “[a]n alien present in the United States who has not been
10 admitted . . . shall be deemed for purposes of this Act an applicant for admission.” 8 U.S.C. §
11 1225(a)(1). Petitioners do not dispute that they are noncitizens present in the United States without
12 having been admitted. Thus, each is an “applicant for admission” and subject to mandatory
13 detention under Section 1225(b).
14

15 A pre-deprivation hearing to determine whether Petitioners are flight risks or dangerous
16 were not required prior to arrest in December of 2025. There is no statutory or regulatory
17 requirement for a hearing prior to re-detention, and the Supreme Court has warned courts against
18 reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596
19 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
20 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural
21 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
22 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).
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25 Federal Respondents acknowledge that district courts have recently found that the
26 revocation of OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight
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1 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
2 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously conflate
3 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
4 Section (c)(8) into the discretionary determination of revoking an OSUP in Section (c)(9)). These
5 decisions err by incorporating Section (c)(8)'s requirements into Section (c)(9). Both Sections
6 provide that the decisions to release or revoke are discretionary. But Section 1236.1(c)(8) includes
7 language requiring the officer to decide that the alien "would not pose a danger to property or
8 persons, and that the alien is likely to appear for any future proceeding." In contrast, Section
9 1236.1(c)(9) does not require such a determination and specifically provides that "release may be
10 revoked at any time." Here, Petitioners are subject to mandatory detention. Thus, analysis of their
11 potential flight risk or dangerousness would be immaterial, and a hearing would be futile.
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13 Due process does not mandate a pre-detention hearing here. Federal Respondents
14 recognize the "weighty liberty interests implicated by the Government's detention of noncitizens."
15 *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while
16 many courts have recognized that noncitizens released from immigration detention have a
17 protected liberty interest in remaining out of custody, the weight of that liberty must be considered
18 in the broader picture of the immigration system, which has long acknowledged that a noncitizen
19 has a lesser liberty interest than a citizen. After all, "[t]he recognized liberty interests of U.S.
20 citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the
21 proposition that Congress may make rules as to aliens that would be unacceptable if applied to
22 citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v.*
23 *Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the exercise of its
24 broad power over naturalization and immigration, Congress regularly makes rules that would be
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1 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the
2 Supreme Court has repeatedly “recognized detention during deportation proceedings as a
3 constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523.

4 The Government has a heightened interest in the immigration detention context. *Rodriguez*
5 *Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth Circuit
6 in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in preventing
7 aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th
8 at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to determining
9 whether removable aliens must be released on bond during the pendency of removal proceedings.”
10 *Rodriguez Diaz*, 53 F.4th at 1208. Accordingly, due process does not require a pre-deprivation
11 hearing in all circumstances where individuals are detained after being released, including for
12 Petitioners here.
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14 **B. Even if this Court were to enjoin Petitioners’ re-detention without a pre-deprivation**
15 **hearing, due process does not require the Government to bear the burden of proof at**
16 **such a hearing.**

17 The Supreme Court has never required the Government to justify immigration detention
18 by clear and convincing evidence. Even if this Court should order Petitioner’s release, this Court
19 should not grant their request to enjoin re-detention “absent written notice and a hearing prior to
20 re-detention where Respondents must prove by clear and convincing evidence that each Petitioner
21 is a flight risk or danger to the community and that no alternatives to detention would mitigate
22 those risks.” Pet., Prayer for Relief. The Constitution does not require the government to bear the
23 burden of proof at a pre-deprivation hearing. Simply put, the Supreme Court has *always* affirmed
24 the constitutionality of detention pending removal proceedings, notwithstanding that the
25 government has *never* borne the burden to justify such detention by clear and convincing evidence.
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1 *See, e.g., Demore v. Kim*, 538 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th
2 1189, 1211 (9th Cir. 2022) (“We are aware of no Supreme Court case placing the burden on the
3 government to justify the continued detention of [a noncitizen], much less through an elevated
4 ‘clear and convincing’ showing.”). In fact, even when considering a noncitizen subjected to
5 potentially indefinite detention after the conclusion of removal proceedings, the Supreme Court
6 has placed the burden on the noncitizen, as opposed to the Government, to justify release. *See*
7 *Zadvydas v. Davis*, 533 U.S. 678, 701(2001). Thus, the Court should not order ICE to bear the
8 burden of proof at a pre-deprivation, if one were to be ordered. At most, the Government should
9 be required to demonstrate dangerousness or flight risk by preponderance of the evidence in line
10 with the immigration officer’s initial determination. 8 C.F.R. § 1236.1(c)(8).

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

21 While due process does not require a pre-deprivation hearing, if this Court should find
22 otherwise, the Government should only be required to demonstrate that Petitioner is a danger to
23 the community or a flight risk by a preponderance of the evidence, consistent with 8 C.F.R. §
24 1236.1(c)(8).
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CONCLUSION

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

DATED this 6th day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 2577 words, in compliance with the Local Civil Rules.