

District Judge Jamal N. Whitehead

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

EMIRHAN ASLAN,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:25-cv-02698-JNW

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
January 20, 2026.

I. INTRODUCTION

This Court should deny Petitioner Emirhan Aslan's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In 2024, U.S. Customs and Border Protection ("CBP") encountered Petitioner shortly after he unlawfully entered the United States. Petitioner was released on an order of recognizance ("OREC"), subject to reporting requirements. Petitioner violated his reporting requirements. As a result of this violation,

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Office Director, Enforcement and Removal Operations, U.S. 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 was taken back into custody. ICE re-detained Petitioner on December 11, 2025,
2 pursuant to an arrest warrant and provided Petitioner with a post-arrest interview.

3 Petitioner erroneously asserts that his re-detention without written notice and a pre-
4 detention hearing before a neutral decisionmaker violates due process. Dkt. 1, (“Petition” or
5 “Pet.”), ¶¶ 44-47. He asks this Court to order his release and “permanently” enjoin his “re-
6 detention during the pendency of his removal proceeding absent written notice and a hearing prior
7 to re-detention where Respondents must prove by clear and convincing evidence that she [sic] is
8 a flight risk or danger to the community and that no alternatives to detention would mitigate those
9 risks.” *Id.*, Prayer for Relief.

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

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. 8 U.S.C. § 1225(b)**

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

22 Congress has determined that all aliens subject to section 1225(b) are subject to mandatory
23 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means
24 of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or

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

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

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

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

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

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

1 Section 236.1(c)(9) provides for the revocation of such release: “When an alien who,
2 having been arrested and taken into custody, has been released, such release may be revoked at
3 any time in the discretion of the district director, acting district director, deputy district director,
4 assistant district director for investigations, assistant district director for detention and
5 deportation, or officer in charge (except foreign), in which event the alien may be taken into
6 physical custody and detained.”

7 **D. Petitioner Emirhan Aslan**

8 Petitioner is a native and citizen of Turkey. *See* Dkt. 1 (“Pet.”), pg. 2; *see also* Declaration
9 of Deportation Officer Robert Andron (“Andron Decl.”) ¶ 4. Petitioner entered the United States
10 near Tecate, California on or about January 19, 2024, after entering the United States without
11 inspection. Andron Decl. ¶ 4.

12 Petitioner was encountered and arrested by Border Patrol on January 21, 2024. *Id.* That
13 same day, January 21, 2025, Petitioner was served with a notice to appear under section
14 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) and Order of Release on
15 Recognizance (OREC). *Id.* ¶ 5; Declaration of Alixandria K. Morris (“Morris Decl.”), Exs. 1-3
16 (Notice to Appear; I-213; OREC). Petitioner was notified by DHS that he must report to any
17 hearing or check-in appointment as directed by ICE per the OREC. Andron Decl. ¶ 5. The
18 Petitioner failed to appear at his required appointment with DHS on September 13, 2024. *Id.* This
19 was a violation of Petitioner’s OREC. *Id.* ¶ 6.

20 On December 11, 2025, Petitioner was arrested in Tukwila, Washington when he reported
21 to DHS’ office and served with an arrest warrant. *Id.* ¶ 7; Morris Decl., Ex. 4 (Arrest Warrant).
22 Petitioner was provided an interview post-arrest. Morris Decl., Ex. 5. Petitioner was transferred
23 to the NWIPC in Tacoma, Washington on December 11, 2025, pending adjudication of his Form
24 I-589. Andron Decl. ¶ 7. The petitioner is currently detained under section 235 of the INA. *Id.*

1 The Petitioner has an upcoming master calendar hearing on January 21, 2026. *Id.* ¶ 8. The
2 Petitioner is represented by counsel in his immigration proceedings. *Id.*

3 **III. LEGAL STANDARD**

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

10 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
11 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
12 § 2241(c)(3); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

13 **IV. ARGUMENT**

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

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

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

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

23 Federal Respondents recognize the “weighty liberty interests implicated by the
24 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at

1 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
2 from immigration detention have a protected liberty interest in remaining out of custody, the
3 weight of that liberty must be considered in the broader picture of the immigration system, which
4 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all,
5 “[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
6 Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to
7 aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th
8 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme
9 Court has explained, “[i]n the exercise of its broad power over naturalization and immigration,
10 Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v.*
11 *Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention
12 during deportation proceedings as a constitutionally valid aspect of the deportation process.”
13 *Demore*, 538 U.S. at 523.

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

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

4 No Supreme Court case has ever required the Government to justify immigration
5 detention by clear and convincing evidence. Even if this Court should order Petitioner’s release,
6 this Court should not grant his request to enjoin his re-detention “absent written notice and a
7 hearing prior to re-detention where Respondents must prove by clear and convincing evidence
8 that she [sic] is a flight risk or danger to the community and that no alternatives to detention would
9 mitigate those risks.” Pet., Prayer for Relief ¶ (3).

10 The Constitution does not require the government to bear the burden of proof at a pre-
11 deprivation hearing. Simply put, the Supreme Court has *always* affirmed the constitutionality of
12 detention pending removal proceedings, notwithstanding that the government has *never* borne the
13 burden to justify such detention by clear and convincing evidence. *See, e.g., Demore v. Kim*, 538
14 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) (“We
15 are aware of no Supreme Court case placing the burden on the government to justify the continued
16 detention of [a noncitizen], much less through an elevated ‘clear and convincing’ showing.”). In
17 fact, even when considering a noncitizen subjected to potentially indefinite detention after the
18 conclusion of removal proceedings, the Supreme Court has placed the burden on the noncitizen,
19 as opposed to the Government, to justify release. *See Zadvydas v. Davis*, 533 U.S. 678, 701(2001).
20 Thus, the Court should not order ICE to bear the burden of proof at a pre-deprivation, if one were
21 to be ordered. At most, the Government should be required to demonstrate dangerousness or flight
22 risk by preponderance of the evidence in line with the immigration officer’s initial determination.
23 8 C.F.R. § 1236.1(c)(8).

24 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

1 mitigate the danger or risk of flight at a pre-deprivation hearing. Pet., Prayer for Relief ¶ (3). But
2 even for criminal alien detainees subjected to prolonged mandatory detention, the Ninth Circuit
3 did not expand the procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011),
4 which is considered “the high-water mark of procedural protections required by due process,” to
5 include a consideration of alternatives to detention for those found to be a danger to their
6 community. *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

7 While due process does not require a pre-deprivation hearing, if this Court should find
8 otherwise, the Government should only be required to demonstrate that Petitioner is a danger to
9 the community or a flight risk by a preponderance of the evidence, consistent with 8 C.F.R. §
10 1236.1(c)(8).

11 **V. CONCLUSION**

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

14 Dated this 12th day of January, 2026.

15 Respectfully submitted,

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19 *Attorneys for Federal Respondents*

20 I certify that this memorandum contains 2,450
21 words, in compliance with the Local Civil Rules.
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