

District Judge Thomas S. Zilly

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

G.S.,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,¹

Respondents.

Case No. 2:25-cv-02704-TSZ

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
January 20, 2026

I. INTRODUCTION

This Court should deny Petitioner G.S.'s Petition for Writ of Habeas Corpus. Dkt. No. 1 ("Pet."). U.S. Immigration and Customs Enforcement ("ICE") mandatorily detains Petitioner pursuant to 8 U.S.C. § 1225 after the revocation of his Order of Recognizance ("OREC").

Accordingly, Federal Respondents respectfully request the Court deny the Petition. This return is supported by the pleadings and documents on file in this case, the Declaration of Deportation Officer Yralees Melendez Diaz ("Melendez Decl.") and the Declaration of Jennifer

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Wong (“Wong Decl.”), with accompanying exhibits. Federal Respondents do not believe an
2 evidentiary hearing is necessary.

3 II. BACKGROUND

4 A. G.S.

5 G.S. is a native and citizen of India, who entered the United States without inspection or
6 parole on or about August 27, 2022, at or near San Luis, Arizona. Melendez Decl. ¶ 4. He was
7 issued a Notice to Appear and charged as removable under section 212(a)(6)(A)(i) of the
8 Immigration and Nationality Act (“INA”). Melendez Decl. ¶ 5; Wong Decl. at Exs. 1 & 2 (Notice
9 to Appear; I-213). On September 8, 2022, Petitioner was released on an order of recognizance
10 (“OREC”). Melendez Decl. ¶ 6; Wong Decl. at Ex. 3 (OREC).

11 On December 9, 2025, U.S. Customs and Border Patrol (“CBP”) agents assigned to the
12 Havre Border Patrol Station were notified that an individual was presenting an Employment
13 Authorization Document (“EAD”) during a Department of Transportation commercial vehicle
14 inspection. Melendez Decl. ¶ 7. CBP agents inspected Petitioner and determined that he
15 represented a flight risk because he was working in Montana and failed to comply with his release
16 conditions. Melendez Decl. ¶ 7; Wong Decl. at Ex. 4 (Notice of Violation and Order).

17 Petitioner was then taken into custody, and an I-200 administrative arrest warrant was
18 secured for Petitioner. Melendez Decl. ¶ 9. He was transferred to the Northwest ICE Processing
19 Center on December 10, 2025, and is scheduled to appear before an Immigration Judge on
20 January 14, 2026. *Id.* ¶ 10.

21 Petitioner’s OREC was formally revoked on January 8, 2025, for failure to comply with
22 conditions of release. Melendez Decl. ¶ 11; Wong Decl. at Ex. 3. Petitioner remains detained
23 under 8 U.S.C. § 1225(b); INA § 235(b). *See* Melendez Decl. ¶ 12.

1 **B. Legal Background**

2 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
 3 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
 4 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
 5 591 U.S. 103, 106 (2020). Section 1225 applies to “applicants for admission” to the United States,
 6 who are defined as “[a]n alien present in the United States who has not been admitted or who
 7 arrives in the United States (whether or not at a designated port of arrival and including an alien
 8 who is brought to the United States after having been interdicted in international or United States
 9 waters).” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those
 10 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
 11 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*,
 12 29 I&N Dec. 216 (BIA 2025).

13 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
 14 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
 15 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
 16 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
 17 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
 18 (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
 19 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
 20 removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8
 21 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
 22 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under
 23 Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.
 24 520, 524 (BIA 2011).

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

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

9 “Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release
10 an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such
11 release would not pose a danger to property or persons, and that the alien is likely to appear for
12 any future proceeding.” 8 C.F.R. § 1236.1(c)(8). Section 236.1(c)(9) provides for the revocation
13 of such release: “When an alien who, having been arrested and taken into custody, has been
14 released, such release may be revoked at any time in the discretion of the district director, acting
15 district director, deputy district director, assistant district director for investigations, assistant
16 district director for detention and deportation, or officer in charge (except foreign), in which event
17 the alien may be taken into physical custody and detained.”

18 **III. JURISDICTION AND STANDARD OF REVIEW**

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

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

6 IV. ARGUMENT

7 Petitioner's claim fails because due process does not require a pre-deprivation hearing
8 before re-detention. The plain language of the statute is clear: Petitioner is subject to mandatory
9 detention under Section 1225(b) because he is an applicant for admission. *Matter of Yajure-*
10 *Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory
11 detention of "an alien who is an applicant for admission, if the examining immigration officer
12 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
13 admitted[.]" 8 U.S.C. § 1225(b)(2)(A). The INA specifies that "[a]n alien present in the United
14 States who has not been admitted . . . shall be deemed for purposes of this Act an applicant for
15 admission." 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that he is a noncitizen who is
16 present in the United States without having been admitted. Thus, he is an "applicant for
17 admission" and subject to mandatory detention under Section 1225(b).

18 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was
19 not required prior to his arrest in December of 2025. There is no statutory or regulatory
20 requirement for a hearing prior to re-detention, and the Supreme Court has warned courts against
21 reading additional procedural requirements into the INA. See *Johnson v. Arteaga-Martinez*, 596
22 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
23 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural
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1 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
2 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

3 Federal Respondents acknowledge that district courts have recently found that the
4 revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a
5 flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-01192,
6 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously
7 conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination
8 set forth in Section (c)(8) into the discretionary determination of revoking an OSUP in Section
9 (c)(9)). These decisions err by incorporating Section (c)(8)’s requirements into Section (c)(9). Both
10 Sections provide that the decisions to release or revoke are discretionary. But Section 1236.1(c)(8)
11 includes language requiring the officer to decide that the alien “would not pose a danger to
12 property or persons, and that the alien is likely to appear for any future proceeding.” In contrast,
13 Section 1236.1(c)(9) does not require such a determination and specifically provides that “release
14 may be revoked at any time.” Here, CBP deemed him to be a flight risk based on facts learned at
15 the inspection. Furthermore, Petitioner is subject to mandatory detention. Thus, additional analysis
16 of his potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

17 Federal Respondents recognize the “weighty liberty interests implicated by the
18 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-08674, 2021 WL 3727614, at
19 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
20 from immigration detention have a protected liberty interest in remaining out of custody, the
21 weight of that liberty must be considered in the broader picture of the immigration system, which
22 has long acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
23 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
24 ‘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 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.

V. CONCLUSION

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

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1 DATED this 12th day of January, 2026.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

5 s/ Jennifer Wong
6 JENNIFER WONG, CA No. 341634
7 Assistant United States Attorney
8 United States Attorney's Office
9 Western District of Washington
10 700 Stewart Street, Suite 5220
11 Seattle, Washington 98101-1271
12 Phone: 206-553-7970
13 Fax: 206-553-4067
14 Email: jennifer.wong@usdoj.gov

15 *Attorneys for Federal Respondents*

16 I certify that this memorandum contains 1,919
17 words, in compliance with the Local Civil Rules.
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