

Magistrate Judge Michelle L. Peterson

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

G.S. 2,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,¹

Respondents.

Case No. 2:25-cv-02705-MLP

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
January 20, 2026

I. INTRODUCTION

This Court should deny Petitioner G.S. 2'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 ("Melendez Decl.") and the Declaration of Jennifer Wong

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

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

3 II. BACKGROUND

4 A. G.S. 2

5 Petitioner is a native and citizen of India, who entered the United States without inspection
6 or parole on or about January 22, 2022, at or near San Luis, Arizona. Melendez Decl. ¶¶ 3-4. He
7 was issued and served a Notice to Appear (“NTA”) on January 24, 2022, and charged as
8 removable under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), 8
9 U.S.C. § 1182(a)(6)(A)(i). Melendez Decl. ¶ 5; Wong Decl. at Exs. 1 & 2 (Notice to Appear; I-
10 213). The NTA set an initial hearing date of May 3, 2022, at Sacramento Immigration Court. *Id.*
11 On January 25, 2022, Petitioner was approved for Alternatives to Detention (“ATD”), with
12 instructions to report to the Sacramento ATD unit on February 9, 2022, and was released by U.S.
13 Customs and Border Patrol (“CBP”) with an Order of Recognizance (“OREC”). Melendez Decl.
14 ¶ 6; Wong Decl. at Exs. 3 & 4 (OREC; ATD Enrollment).

15 On February 9, 2022, the NTA was filed with the Executive Office for Immigration
16 Review (“EOIR”) and the Sacramento Immigration Court issued a notice of cancellation to cancel
17 the immigration hearing that was previously set for May 3, 2022, as well as a notice that a new
18 hearing date would be issued. Melendez Decl. ¶ 7. On the same day, Petitioner reported in-person
19 to the Office of Enforcement and Removal Operations (“ERO”) in Sacramento. *Id.* He confirmed
20 that his address and phone were current. *Id.* ERO terminated him from the ATD program and told
21 him to report in-person at ERO next on February 6, 2023. *Id.*

22 On February 10, 2023, Petitioner again reported to the ERO office in Sacramento, and he
23 confirmed no change to his address or phone. *Id.* ¶ 8. ERO noted that there had not been a hearing
24 date set for immigration court and set the next in-person report date for February 14, 2024. *Id.*

1 Petitioner missed this in-person report date. *Id.* ¶ 9. This was noted by ERO when Petitioner
2 reported in-person to Sacramento ERO on September 22, 2025. *Id.* During this report date,
3 Petitioner was not able to confirm his address, so ERO referred him for GPS installation and
4 enrolled in the ATD program as a result. *Id.*

5 On October 14, 2025, Petitioner filed an updated Form I-589 with EOIR, and the
6 Sacramento Immigration Court issued an initial scheduling order for filing deadlines on
7 November 10, 2025. *Id.* ¶¶ 10-11.

8 On December 9, 2025, Petitioner filed a change of address with an EOIR Form 33, which
9 listed an address in Kent, Washington. *Id.* ¶ 12. He requested an ATD transfer to Kent,
10 Washington on December 10, 2025, and was advised to report in-person to Seattle ERO on
11 December 16, 2025. *Id.* ¶ 13. He filed written pleadings with EOIR that admitted the factual
12 allegations in the NTA and conceded the charge of removability on December 11, 2025. *Id.* ¶ 14.

13 On December 16, 2025, Petitioner reported in-person to Seattle ERO where his OREC
14 was revoked, and he was terminated from the ATD program. Melendez Decl. ¶ 15; Wong Decl.
15 at Ex. 3. He was taken into custody and transferred to the Northwest ICE Processing Center in
16 Tacoma, Washington. *See* Melendez Decl. ¶¶ 15-16. He is scheduled to appear before an
17 Immigration Judge on January 21, 2026, for a master calendar hearing. *Id.* ¶¶ 17-18.

18 **B. Legal Background**

19 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
20 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
21 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
22 591 U.S. 103, 106 (2020). Section 1225 applies to “applicants for admission” to the United States,
23 who are defined as “[a]n alien present in the United States who has not been admitted or who
24 arrives in the United States (whether or not at a designated port of arrival and including an alien

1 who is brought to the United States after having been interdicted in international or United States
2 waters).” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those
3 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
4 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*,
5 29 I&N Dec. 216 (BIA 2025).

6 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
7 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
8 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
9 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
10 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
11 (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
12 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
13 removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8
14 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
15 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under
16 Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.
17 520, 524 (BIA 2011).

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

C. Revocation of Discretionary Release from Detention

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

III. JURISDICTION AND STANDARD OF REVIEW

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

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

IV. ARGUMENT

Petitioner’s claim fails because due process does not require a pre-deprivation hearing before re-detention. The plain language of the statute is clear: Petitioner is subject to mandatory

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

11 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was
12 not required prior to his arrest in December of 2025. There is no statutory or regulatory
13 requirement for a hearing prior to re-detention, and the Supreme Court has warned courts against
14 reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596
15 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
16 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural
17 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
18 *Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

19 Federal Respondents acknowledge that district courts have recently found that the
20 revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a
21 flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-01192,
22 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions erroneously
23 conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a determination
24 set forth in Section (c)(8) into the discretionary determination of revoking an OSUP in Section

(c)(9)). These decisions err by incorporating Section (c)(8)'s requirements into Section (c)(9). Both Sections provide that the decisions to release or revoke are discretionary. But Section 1236.1(c)(8) includes language requiring the officer to decide that the alien "would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." In contrast, Section 1236.1(c)(9) does not require such a determination and specifically provides that "release may be revoked at any time." Here, Petitioner is subject to mandatory detention. Thus, analysis of his potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

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

1 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
2 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
3 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to
4 determining whether removable aliens must be released on bond during the pendency of removal
5 proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208.

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

8 **V. CONCLUSION**

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

11 DATED this 12th day of January, 2026.

12 Respectfully submitted,

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20 *Attorneys for Federal Respondents*

21 I certify that this memorandum contains 2,191
22 words, in compliance with the Local Civil Rules.