

Magistrate Judge S. Kate Vaughan

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

FRANCISCO HILARIO FRANCISCO
FRANCISCO,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02738-SKV

FEDERAL RESPONDENTS' RETURN
MEMORANDUM

Noted for Consideration:
January 20, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Francisco Hilario Francisco Francisco at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). On May 7, 2023, U.S. Border Patrol ("USBP") encountered Petitioner shortly after he unlawfully entered the United States and issued him a Notices to Appear because he was inadmissible. USBP released Petitioner on an order of recognizance ("OREC") due to a lack of space at that time. On December 26, 2025, ICE detained Petitioner.

Petitioner asserts that he cannot be subject to detention without a pre-deprivation hearing because he was previously released on his own recognizance. Pet. ¶ 17. He asks this Court to

1 order release and to enjoin “re-detention during the pendency of this litigation....” Pet. at 6,
2 Prayer for Relief.

3 Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b).

4 **II. BACKGROUND**

5 **A. Petitioner Francisco**

6 Petitioner Francisco is a citizen of Guatemala who entered the United States without
7 inspection or parole in December of 2023 and was apprehended shortly thereafter by USBP.
8 Hubbard Decl., ¶ 3; Steveson Decl., Exh. A, 2023 Form I-213. USBP issued Francisco a notice
9 to appear charging him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Steveson Decl.,
10 Exh. B, Notice to Appear. USBP released him on OREC due to a lack of space, with instructions
11 to report to ERO in Chicago, Illinois. Steveson Decl., Exh. C, OREC. One of the terms in
12 Petitioner’s OREC was advance approval for changes of address. *Id.*

13 Petitioner did not report to ERO in Chicago, Illinois as instructed, but did report to ERO
14 to Birmingham, Alabama on June 15, 2023, and reported his new address to them. Hubbard
15 Decl., ¶ 9. ERO instructed Petitioner to update the immigration court with his Alabama address
16 and was given a follow up appointment to report back to ERO on October 17, 2023. Hubbard
17 Decl., ¶ 9.

18 On October 5, 2023, Francisco missed his scheduled immigration hearing and was
19 ordered removed in absentia. Hubbard Decl., ¶ 10. On May 6, 2024, Francisco updated
20 immigration court on his new address in Salem, Oregon and later that month, on May 17, 2024,
21 his immigration proceedings were reopened. *Id.* However, Francisco did not contact ERO and
22 update his information with them. Hubbard Decl., ¶ 12.

23 On December 26, 2025, ERO was searching for another individual located at the same
24 address, but different apartment number than Francisco. Hubbard Decl., ¶ 13-14. Francisco

1 matched the general description of the target. *Id.* ERO pulled Francisco over, identified, and
 2 inspected his status. Hubbard Decl., ¶ 14-15; Steveson Decl., Exh. D, 2025 Form I-213¹. ERO
 3 made an arrest determination. Hubbard Decl., ¶ 16.

4 Francisco is now in detained immigration proceedings at the NWIPC in Tacoma,
 5 Washington. Hubbard Decl., ¶¶ 17-18. His next hearing date is January 14, 2026. *Id.*

6 **B. Legal Background**

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

18 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if
 19 a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
 20 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
 21 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed

22 _____
 23 ¹ The December 26, 2025 Form I-213 requires two clarifications that may not have been identified at the time the
 24 document was drafted but have subsequently been identified after review of the records. First, although Petitioner
 never reported to ERO in Chicago as instructed by the OREC paperwork, Petitioner did report to ERO in
 Birmingham, Alabama. Second, although Petitioner did report his address in Salem, Oregon, to EOIR, he never
 reported his address in Alabama, to EOIR.

from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (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 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 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 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

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

1 physical custody and detained.

2 8 C.F.R. § 1236.1(c)(9).

3 **IV. ARGUMENT**

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

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

15 A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was
16 not required prior to his 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)).

23 Federal Respondents acknowledge that district courts have recently found that the
24 revocation of OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight

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, Petitioner is subject to mandatory detention. Thus, analysis of his
11 potential flight risk or dangerousness would be immaterial, and a hearing would be futile.

12 Due process does not mandate a pre-detention hearing here. Federal Respondents
13 recognize the “weighty liberty interests implicated by the Government’s detention of
14 noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20,
15 2021). But while many courts have recognized that noncitizens released from immigration
16 detention have a protected liberty interest in remaining out of custody, the weight of that liberty
17 must be considered in the broader picture of the immigration system, which has long
18 acknowledged that a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he
19 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court
20 has ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens
21 that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189,
22 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court
23 has explained, “[i]n the exercise of its broad power over naturalization and immigration,
24 Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v.*

1 *Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized
2 detention during deportation proceedings as a constitutionally valid aspect of the deportation
3 process.” *Demore*, 538 U.S. at 523.

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

13 CONCLUSION

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

16 //

17 //

18

19

20

21

22

23

24

1 DATED this 13th day of January, 2026.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

5 s/ Jordan C. Steveson
6 JORDAN C. STEVESON, WA# 40636
7 Special Assistant United States Attorney
8 United States Attorney's Office
9 1201 Pacific Avenue, Suite 1201
10 Tacoma, Washington 98402
11 Phone: 253-428-3802
12 Email: jordan.steveson@usdoj.gov
13 *Attorneys for Federal Respondents*

14 *I certify that this memorandum contains 1833*
15 *words, in compliance with the Local Civil Rules.*