

District Judge Richard A. Jones

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

SADAM SHINWARI and SAIRING YUNEIXI
TOVAR FIGUEROA,

Petitioners,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00009-RAJ

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
January 26, 2026.

I. INTRODUCTION

This Court should deny Petitioners' Petition for a Writ of Habeas Corpus. Dkt. 1. Petitioners assert that the revocation of their conditional parole and resultant immigration detention violates due process. But U.S. Immigration and Customs Enforcement ("ICE") lawfully revoked Petitioners' conditional parole. Further, as applicants for admission, Petitioners are properly detained at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b).

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

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. 8 U.S.C. § 1225(b)**

3 The INA governs the detention and release of noncitizens during and following their
4 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
5 detention periods are generally referred to as “pre-order” (meaning before the entry of a final
6 order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of
7 removal). *Compare* 8 U.S.C. § 1225 (requiring mandatory pre-order detention) *with* § 1231(a)
8 (authorizing post-order detention).

9 Applicants for admission under 8 U.S.C. § 1225 fall into one of two categories. Section
10 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud,
11 misrepresentation, or lack of valid documentation, and certain other aliens designated by the
12 Attorney General in her discretion. Separately, section 1225(b)(2) serves as a catchall provision
13 that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific
14 exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

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

1 discretion to grant indefinite parole to those subject to mandatory detention.

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

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

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

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

15 **D. Petitioners**

16 **1. Petitioner *Sadam Shinwari***

17 Petitioner Shinwari is a native and citizen of Afghanistan who was paroled into the United
18 States during Operation Allies Welcome. Declaration of Deportation Office Enrique Rodriguez
19 (“Rodriguez Decl.”) ¶ 4. Shinwari was initially paroled into the United States on October 15,
20 2021, at the Philadelphia International Airport. *Id.* He was initially paroled until October 13, 2023,
21 but he was later re-paroled until October 14, 2025. *Id.*

22 Petitioner Shinwari filed an application for relief from removal with U.S. Citizenship and
23 Immigration Services (“USCIS”) on February 26, 2023, which remains pending. *Id.* ¶ 5. On July
24 14, 2025, Shinwari was arrested by the Vancouver Police Department for harassment and

1 displaying a weapon. *Id.* ¶ 6. The disposition is pending. *Id.* On December 17, 2025, Portland
2 ERO Officers encountered Shinwari after his scheduled interview with USCIS in Portland,
3 Oregon. *Id.* ¶ 7. Officers approached Shinwari while wearing ICE badges and identified
4 themselves as United States Immigration and Customs Enforcement Officers. *Id.* Shinwari was
5 positively identified and was informed that he was being placed under arrest. *Id.*; Declaration of
6 Alixandria K. Morris (“Morris Decl.”), Ex. 1 (Arrest Warrant). Shinwari was then arrested
7 without incident at approximately 1:00 p.m. Rodriguez Decl. ¶ 7. Petitioner Shinwari was
8 transported to the NWIPC on that same date, where he presently remains in custody. *Id.* ¶ 8.

9 On December 17, 2025, Shinwari was issued a Notice to Appear (“NTA”) charging that
10 Petitioner is inadmissible to the United States pursuant to section 212 (a)(7)(A)(i)(I) of the
11 Immigration and Nationality Act (“INA”), in that Shinwari lacks any documents which would
12 allow him to lawfully enter or remain in the United States. *Id.* ¶ 9; Morris Decl., Exs. 2-3 (NTA;
13 I-213). Shinwari had a hearing before an Immigration Judge on January 15, 2026. Rodriguez
14 Decl. ¶ 10. At the hearing Shinwari requested a continuance, and the case was continued on
15 Petitioner’s request to January 26, 2026. *Id.*

16 **2. *Petitioner Sairing Yuneixi Tovar Figueroa***

17 Petitioner Tovar Figueroa is a native and citizen of Venezuela who arrived at the United
18 States and applied for admission on or about June 04, 2023, at Nogales, Arizona. Rodriguez Decl.
19 ¶ 11. Tovar Figueroa lacked documents which would allow entry into the United States. *Id.* ¶ 12.
20 Tovar Figueroa was issued a NTA charging her as inadmissible pursuant to section 212
21 (a)(7)(A)(i)(I) of the INA, in that Tovar Figueroa lacks any documents which would allow her to
22 lawfully enter or remain in the United States. *Id.* ¶ 13; Morris Decl., Ex. 4 (NTA). An initial
23 appearance before an Immigration Judge was set for October 28, 2027. Rodriguez Decl. ¶ 13.
24 Tovar Figueroa was paroled into the United States for a period of two years. *Id.* ¶ 14. On

1 December 2, 2025, U.S. Customs and Border Protection (CBP) officers encountered Tovar
2 Figueroa while conducting an immigration arrest of another individual immigration officials
3 knew to be present in the United States illegally. *Id.* ¶ 15. Biometric data identified Tovar
4 Figueroa as also being present in the United States without lawful status. *Id.* Tovar Figueroa was
5 taken into custody without incident. *Id.*; Morris Decl., Ex. 5 (I-213). An I-200 administrative
6 arrest warrant for Tovar Figueroa’s arrest was also secured. Rodriguez Decl. ¶ 15; Morris Decl.,
7 Ex. 6 (Arrest Warrant).

8 On December 2, 2025, while in ICE custody, Tovar Figueroa claimed to be a native and
9 citizen of Venezuela and also claimed to have not received any lawful immigration status.
10 Rodriguez Decl. ¶ 16. On December 2, 2025, Tovar Figueroa was transferred to the NWIPC,
11 where she presently remains detained. *Id.* ¶ 17. On January 8, 2026, Tovar Figueroa was ordered
12 removed² from the United States to Ecuador pursuant to the Asylum Cooperative Agreement
13 (ACA) with Ecuador, 90 Fed. Reg. 51376 (Nov. 17, 2025). *Id.* ¶ 18.

14 III. LEGAL STANDARD

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

21 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
22

23 ² While Petitioner Tovar Figueroa has an order of removal, Federal Respondents do not believe this order of removal
24 to be administratively final. Following an order of removal, Petitioner has 30 calendar days to appeal. *See* 8 C.F.R.
1003.38(b). Thus, her detention remains pursuant to 8 U.S.C. § 1225(b) until her order becomes administratively
final.

1 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
2 § 2241(c)(3); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

3 **IV. ARGUMENT**

4 **A. Petitioners are lawfully detained**

5 As applicants for admission, Petitioners are mandatorily detained pursuant to 8 U.S.C. §
6 1225(b). *See Matter of Q. Li*, 29 I&N Dec. at 69; *Matter of Yajure Hurtado*, 29 I&N Dec. at
7 220. Although DHS initially released Petitioners on temporary parole, DHS has the discretion to
8 revoke that parole. *See* 8 C.F.R. § 1236.1(c)(9). Petitioners’ detention without a pre-detention
9 hearing is lawful.

10 **B. Due process does not require a pre-deprivation hearing before re-detention.**

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

22 A pre-deprivation hearing to determine whether Petitioners are a flight risk or dangerous
23 was not required prior to either Petitioner’s arrest. There is no statutory or regulatory requirement
24 for a hearing prior to re-detention, and the Supreme Court has warned courts against reading

1 additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S.
2 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6)
3 because “reviewing courts . . . are generally not free to impose [additional procedural rights] if
4 the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power Corp. v.*
5 *Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)).

6 Federal Respondents acknowledge that district courts have recently found that the
7 revocation of an OREC or parole requires a pre-deprivation hearing to determine if that noncitizen
8 is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 25-cv-1192,
9 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, ---
10 F. Supp. 3d ---, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025). Respectfully, these
11 decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.*
12 (imposing a determination set forth in Section (c)(8) into the discretionary determination of
13 revoking an OSUP in Section (c)(9)). These decisions err by incorporating Section (c)(8)’s
14 requirements into Section (c)(9). Both Sections provide that the decisions to release or revoke
15 are discretionary. But Section 1236.1(c)(8) includes language requiring the officer to decide that
16 the alien “would not pose a danger to property or persons, and that the alien is likely to appear for
17 any future proceeding.” In contrast, Section 1236.1(c)(9) does not require such a determination
18 and specifically provides that “release may be revoked at any time.” Because Petitioners are
19 subject to mandatory detention, any assessment of flight risk or dangerousness would be
20 immaterial.

21 Federal Respondents recognize the “weighty liberty interests implicated by the
22 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
23 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
24 from immigration detention have a protected liberty interest in remaining out of custody, the

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

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

21 **C. Revocation of Petitioners’ parole comports with due process.**

22 Petitioners’ re-detention also comports with procedural due process. “Due process is
23 flexible and calls for such procedural protections as the particular situation demands.” *Mathews*
24 *v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioners’ detention

1 is consistent with their due process rights. Under *Mathews*, “[t]he fundamental requirement of
2 due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.*,
3 at 333 (internal quotation marks omitted). This calls for an analysis of (1) “the private interest
4 that will be affected by the official action,” (2) “the risk of an erroneous deprivation of such
5 interest through the procedures used, and probable value, if any, of additional or substitute
6 procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

7 While many courts have recognized that noncitizens released from immigration detention
8 have a protected liberty interest in remaining out of custody, the weight of that liberty must be
9 considered in the broader picture of the immigration system, which has long acknowledged that
10 a noncitizen has a lesser liberty interest than a citizen. After all, “[t]he recognized liberty interests
11 of U.S. citizens and aliens are not coextensive: the Supreme Court has ‘firmly and repeatedly
12 endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if
13 applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting
14 *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n the
15 exercise of its broad power over naturalization and immigration, Congress regularly makes rules
16 that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).
17 Indeed, the Supreme Court has repeatedly “recognized detention during deportation proceedings
18 as a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523. While
19 Petitioners have some liberty interest in their continued freedom from detention after being
20 released from custody, that interest is tempered by the relatively short period of time that they
21 were released.

22 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
23 of Petitioners’ liberty without a pre-deprivation hearing here is minimal. Petitioners had notice
24 that their parole was only for a defined, brief period of time and could be revoked at any time.

1 As for the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test
2 “must account for the heightened government interest in the immigration detention context.”
3 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the
4 Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
5 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez*
6 *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes
7 to determining whether removable aliens must be released on bond during the pendency of
8 removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an
9 interest in revoking parole and returning individuals to custody who violate their terms.

10 In short, the three *Mathews* factors demonstrate that Petitioners’ detention comports with
11 procedural due process.

12 **D. Even if a hearing were required, due process does not require the Government to**
13 **bear a clear-and-convincing burden.**

14 No Supreme Court case has ever required the Government to justify immigration
15 detention by clear and convincing evidence. Even if this Court should order Petitioners’ release,
16 this Court should not grant their request to enjoin their re-detention “absent written notice and a
17 hearing prior to re-detention where Respondents must prove by clear and convincing evidence
18 that each Petitioner is a flight risk or danger to the community and that no alternatives to detention
19 would mitigate those risks.” Pet., Prayer for Relief ¶ (4).

20 The Constitution does not require the government to bear the burden of proof at a pre-
21 deprivation hearing. Simply put, the Supreme Court has *always* affirmed the constitutionality of
22 detention pending removal proceedings, notwithstanding that the government has *never* borne the
23 burden to justify such detention by clear and convincing evidence. *See, e.g., Demore v. Kim*, 538
24 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) (“We

1 are aware of no Supreme Court case placing the burden on the government to justify the continued
2 detention of [a noncitizen], much less through an elevated ‘clear and convincing’ showing.”). In
3 fact, even when considering a noncitizen subjected to potentially indefinite detention after the
4 conclusion of removal proceedings, the Supreme Court has placed the burden on the noncitizen,
5 as opposed to the Government, to justify release. *See Zadvydas v. Davis*, 533 U.S. 678, 701(2001).
6 Thus, the Court should not order ICE to bear the burden of proof at a pre-deprivation, if one were
7 to be ordered. At most, the Government should be required to demonstrate dangerousness or flight
8 risk by a *preponderance of the evidence* in line with the immigration officer’s initial
9 determination. 8 C.F.R. § 1236.1(c)(8).

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

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

22 V. CONCLUSION

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

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Dated this 20th day of January 2026.

Respectfully submitted,

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I certify that this memorandum contains 3,247 words, in compliance with the Local Civil Rules.