

Magistrate Judge Grady J. Leupold

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

GLENDY YANETH ARREAGA MORALES
DE PUTUL,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00129-GJL

FEDERAL RESPONDENTS'¹
RETURN

Noted for Consideration:
February 2, 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)(2). In 2023, immigration officers apprehended Petitioner shortly after she unlawfully entered the United States without inspection or parole. U.S. Department of Homeland Security ("DHS") issued her a notice to appear, which commenced removal proceedings, and Petitioner was released on her recognizance, subject to supervision requirements through the Alternatives to Detention ("ATD") program. On

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

1 various occasions, Petitioner violated her ATD requirements. As a result, Petitioner was taken
2 back into ICE custody in December 2025.

3 Petitioner erroneously asserts that her re-detention without written notice and a pre-
4 detention hearing before a neutral decisionmaker violates due process. Pet., ¶¶ 52-55. But this
5 fails to look at this case independently as procedural due process is flexible and should be
6 appropriate for individual circumstances. Petitioner asks this Court to order her release and
7 “permanently” enjoin her “re-detention during the pendency of her removal proceeding absent
8 written notice and a hearing prior to re-detention where Respondents must prove by clear and
9 convincing evidence that she is a flight risk or danger to the community and that no alternatives to
10 detention would mitigate those risks.” *Id.*, Prayer for Relief. Such relief would require this Court
11 to ignore Petitioner’s multiple violations of her release. *Martinez Hernandez v. Andrews*, No.
12 1:25-cv-01035, 2025 WL 2495767, at *12 (E.D. Cal. Aug. 28, 2025) (finding post-deprivation
13 process adequate due to ATD violations). Accordingly, this Court should deny the relief sought
14 here.

15 II. FACTUAL AND PROCEDURAL BACKGROUND

16 A. 8 U.S.C. § 1225(b)

17 Petitioner is an applicant for admission who is subject to mandatory detention pursuant to
18 8 U.S.C. § 1225(b). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Applicants for
19 admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially
20 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and
21 certain other aliens designated by the Attorney General in her discretion. Separately, section
22 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered
23 by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*,
24 583 U.S. 281, 287 (2018).

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

9 **B. Discretionary Release from Detention**

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

21 **C. Petitioner Arreaga Morales de Putul**

22 Petitioner is a native and citizen of Guatemala. Soraghan Decl., ¶ 4. Petitioner entered the
23 United States near Sasabe, Arizona, on or about September 22, 2023, after entering the United
24 States without inspection. Soraghan Decl. ¶ 4. Immigration officers apprehended Petitioner on

1 the same day. Soraghan Decl., ¶ 4; Lambert Decl., Ex. A, Form I-213. DHS served her with a
2 notice to appear charging her as inadmissible under 8 U.S.C. § 1182(a)(6)(a)(I). Soraghan Decl.,
3 ¶ 5; Lambert Decl., Ex. B, Notice to Appear. DHS released Petitioner on an OREC and enrolled
4 her in ATD with various supervision requirements. Soraghan Decl., ¶ 5; Dkt. No. 1-1, OREC.

5 Petitioner violated her ATD requirements. On six occasions, Petitioner missed her ATD
6 biometric check-ins. Soraghan Decl., ¶ 6. On each occasion, she was subsequently contacted and
7 thereafter completed a biometric check-in. *Id.* Due to this history of violations, Petitioner's ATD
8 requirements were escalated to include GPS monitoring. *Id.*, ¶ 7. However, Petitioner again
9 violated her ATD requirements on November 7, 2025, when she was not at home for a scheduled
10 home visit, which she claimed to have forgotten. *Id.*, ¶ 8. This led to a referral for enforcement
11 action. *Id.*, ¶ 9.

12 On December 19, 2025, ICE arrested Petitioner. Soraghan Decl., ¶ 10; Lambert Decl., Ex.
13 C, Warrant for Arrest; Ex. D, Form I-213. She was transferred to the NWIPC, where she is
14 currently detained. Soraghan Decl., ¶ 11. Petitioner's next appearance at the Tacoma Immigratin
15 Court is scheduled for February 18, 2026. Soraghan Decl., ¶ 12.

16 III. LEGAL STANDARD

17 "The district courts of the United States ... are courts of limited jurisdiction. They possess
18 only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopeth Servs.,*
19 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been
20 tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland*
21 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
22 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
23 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
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or treaties 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).

IV. ARGUMENT

A. Petitioner's detention is mandatory pursuant to 8 U.S.C. § 1225(b)

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

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

A pre-deprivation hearing to determine whether Petitioner is a flight risk or dangerous was not required prior to her arrest in December of 2025. “Due process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) “the private interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards,” and (3) the

² Federal Respondents acknowledge that courts have disagreed with the government’s interpretation of Section 1225(b) and found that mandatory detention for certain individuals to be unlawful as interpreted. *See, e.g., Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

1 Government's interest. *Id.*, at 334-35. As described below, the facts in this situation do not
2 support a blanket requirement of written notice and a hearing prior to Petitioner's detention.

3 Due process does not mandate a pre-detention hearing here. As to the first *Mathews* factor,
4 Federal Respondents recognize the "weighty liberty interests implicated by the Government's
5 detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.
6 Aug. 20, 2021). But while many courts have recognized that noncitizens released from
7 immigration detention have a protected liberty interest in remaining out of custody, the weight of
8 that liberty must be considered in the broader picture of the immigration system, which has long
9 acknowledged that an alien has a lesser liberty interest than a citizen. After all, "[t]he recognized
10 liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and
11 repeatedly endorsed the proposition that Congress may make rules as to aliens that would be
12 unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir.
13 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained,
14 "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly
15 makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-
16 80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation
17 proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at
18 523. Thus, Federal Respondents acknowledge that Petitioner had some liberty interest in her
19 continued freedom from detention while on OREC. However, that liberty interest was conditional.

20 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
21 erroneous deprivation of Petitioner's liberty did not necessitate a pre-deprivation hearing. The
22 Supreme Court has held that "the Constitution requires some kind of hearing *before* the State
23 deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis
24 in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing

1 is not appropriate in every situation. *Id.*, at 128 (noting there may be “special case[s]” where a
2 pre-deprivation hearing is impracticable). Petitioner’s re-detention qualifies as a special case due
3 to her ATD violations.

4 In *Martinez Hernandez v. Andrews*, the district court found that allegations of ATD
5 violations that “are not obviously pretextual as in *E.A.T.-B*”³ provided at least an arguable basis
6 “that providing [the petitioner] with notice and a pre-deprivation hearing would have been
7 impracticable and/or would have motivated his flight.” *Martinez Hernandez*, 2025 WL 2495767,
8 at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous
9 deprivation could be reduced through a “prompt, post-deprivation process.” *Id.* (collecting cases).

10 Here, a pre-deprivation hearing would be futile as her detention is based on her mandatory
11 detention. An analysis of Petitioner’s dangerousness or flight risk should not be relevant.
12 However, if this Court were to order a hearing, Petitioner should not be released as her ATD
13 violations provided ICE with a basis to arrest her without notice, and Petitioner should be provided
14 with a post-deprivation hearing to diminish the possibility of erroneous deprivation.

15 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
16 test and procedural safeguards “must account for the heightened government interest in the
17 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s
18 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government
19 clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation
20 of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is
21 especially true when it comes to determining whether removable aliens must be released on bond
22 during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government
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24 ³ *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

1 likewise has an interest in protecting immigration proceedings from unnecessary delay, especially
2 considering Congress's purpose for enacting Section 1225(b).

3 Federal Respondents acknowledge that district courts have found that the revocation of
4 OREC requires a pre-deprivation hearing to determine if that noncitizen is a flight risk or a danger
5 to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5
6 (W.D. Wash. Aug. 19, 2025). Here, Petitioner is subject to mandatory detention as an applicant
7 for admission. Where detention is mandatory, a pre-detention hearing would serve no purpose
8 because release is not legally available. *Calderon v. Noem*, No. 2:25-cv-2136, 2025 WL 3754042,
9 at *8 (W.D. Wash. Dec. 29, 2025) ("The cases cited by Mr. Calderon are inapposite because none
10 of them involved mandatory detention (under the LRA or otherwise).") "Accordingly, a pre-
11 detention hearing could only have one outcome: detention." *Id.*

12 Accordingly, Petitioner is lawfully detained, and this Court should deny her request for
13 release from immigration custody. Furthermore, her requests for relief concerning speculative
14 future redetention are not ripe for review in this habeas matter.

15 V. CONCLUSION

16 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
17 the Petition.

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1 DATED this 28th day of January, 2026.

2 Respectfully submitted,

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11 *I certify that this memorandum contains 2,205*
12 *words, in compliance with the Local Civil Rules.*