

Magistrate Judge Brian A. Tsuchida

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

LINUS CHICOZE-EZECHI,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:26-cv-00145-BAT

FEDERAL RESPONDENTS'¹ RETURN

Noted for Consideration:
February 4, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) detains Petitioner Linus Chocoze-Ezechi at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In 2023, U.S. Border Patrol (“USBP”) encountered Petitioner shortly after he unlawfully entered the United States. Initially Petitioner was released by Border Patrol on an order of recognizance (“OREC”) with a requirement to check in with Immigration and Customs Enforcement (“ICE”) for monitoring. At his check-in with ICE, Petitioner was scheduled for enrollment in alternatives to detention, which started the following year in 2024. After violating his alternatives to detention several times, ICE re-detained Petitioner on December 31, 2025.

¹ Respondent Bruce Scott is not a federal employee and not represented by undersigned counsel.

1 Petitioner asserts that his re-detention without written notice and a pre-detention hearing
2 before a neutral decisionmaker violates due process. Dkt. 1 Petition (“Pet.”) at 7-8. He asks this
3 Court to order his release and to enjoin his re-detention “absent written notice and a hearing
4 prior to re-detention where Respondents must prove by clear and convincing evidence that he is
5 a flight risk or danger to the community and that no alternatives to detention would mitigate
6 those risks.” *Id.*, Prayer for Relief.

7 This Court should deny the relief sought here. Petitioner is subject to mandatory
8 detention pursuant to 8 U.S.C. § 1225(b).

9 II. BACKGROUND

10 A. Petitioner Chicoze-Ezechi

11 Petitioner is a citizen of Nigeria who entered the United States without inspection or
12 parole on or about July 16, 2023, and was apprehended shortly thereafter by U.S. Border Patrol
13 (“USBP”). Pet., ¶¶ 20-21; Declaration of Deportation Officer Joseph Carnevale (“Carnevale
14 Decl.”), ¶ 3-4. USBP issued Petitioner a Notice to Appear, charging Petitioner with removal
15 due to being inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Steveson Decl., Exh. A,
16 Notice to Appear.

17 Petitioner was released on OREC and instructed to report at the nearest ICE/ERO office
18 of his destination. Steveson Decl., Exh. B, 2023 I-213, Exh. C, OREC.² On November 29, 2023,
19 Petitioner reported for his initial check-in with ICE where he was served with a copy of the
20 OREC³ documents and scheduled for enrollment in alternatives to detention. Carnevale Decl., ¶
21 7.

22
23 ² The 2023 OREC paperwork includes reference to an attachment which was not located in the certified copy of the
24 A-file.

³ Updated OREC documents were not found in the certified A-file.

1 On March 27, 2024, Petitioner missed his initial appointment for enrollment in
2 monitoring. Carnevale Decl., ¶ 8. On July 10, 2024, Petitioner was successfully enrolled in
3 alternatives to detention. Carnevale Decl., ¶ 9.

4 Petitioner failed three virtual home visits in 2025. Carnevale Decl., ¶ 10. On or about
5 December 31, 2025, ICE reviewed Petitioner's immigration records, determined that Petitioner
6 had violated his OREC. Carnevale Decl., ¶¶ 12-14; Steveson Decl., Exh. D, 2025 I-213. ICE
7 cancelled Petitioner's OREC and transported Petitioner to the Northwest ICE Processing Center
8 ("NWIPC"). *Id.*; Steveson Decl., Exh. E, OREC Cancellation.

9 **B. Legal Background**

10 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that
11 the Executive could "expedite removal of aliens lacking a legal basis to remain in the United
12 States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v.*
13 *Thuraissigiam*, 591 U.S. 103, 106 (2020). Section 1225 applies to "applicants for admission" to
14 the United States, who are defined as "[a]n alien present in the United States who has not been
15 admitted or who arrives in the United States (whether or not at a designated port of arrival and
16 including an alien who is brought to the United States after having been interdicted in
17 international or United States waters)." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall
18 into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287
19 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

21 All applicants for admission are inspected. 8 U.S.C. 1225(b). DHS has discretion to
22 pursue expedited removal under Section 1225(b)(1) or it can apply Section 1225(b)(2) and seek
23 removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523-524 (BIA

2011). If the immigration authority determines that the noncitizen being inspected is inadmissible, then Section 1225(b)(2) is applied. *Jennings*, 583 U.S. at 288.

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). 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. ARGUMENT

A. 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 detention under Section 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory detention of “an

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

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

17 Federal Respondents acknowledge that district courts have recently found that the
18 revocation of an OREC requires a pre-deprivation hearing to determine if that noncitizen is a
19 flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192,
20 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025). Respectfully, these decisions
21 erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8). *See id.* (imposing a
22 determination set forth in Section (c)(8) into the discretionary determination of revoking an
23 OSUP in Section (c)(9)). These decisions err by incorporating Section (c)(8)’s requirements
24 into Section (c)(9). Both Sections provide that the decisions to release or revoke are

1 discretionary. But Section 1236.1(c)(8) includes language requiring the officer to decide that
2 the alien “would not pose a danger to property or persons, and that the alien is likely to appear
3 for any future proceeding.” In contrast, Section 1236.1(c)(9) does not require such a
4 determination and specifically provides that “release may be revoked at any time.” Here,
5 Petitioner is subject to mandatory detention. Thus, analysis of his potential flight risk or
6 dangerousness would be immaterial, and a hearing would be futile.

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

22 The Government has a heightened interest in the immigration detention context.
23 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the
24 Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in

1 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez*
2 *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it
3 comes to determining whether removable aliens must be released on bond during the pendency
4 of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. Accordingly, due process does not
5 require a pre-deprivation hearing in all circumstances where individuals are detained after being
6 released, including for Petitioner here.

7 This Court should further deny Petitioner’s request that a pre-detention hearing be
8 required for any future while removal proceedings are ongoing. This request is speculative and
9 not ripe for review. This request presumes that Petitioner will be released and then re-detained
10 at some point. This Court has no way to foresee what circumstances may lead to a purported
11 redetention. For example, Petitioner could commit a criminal offense that makes his detention
12 mandatory under the Laken Riley Act. See 8 U.S.C. § 1226(c). A pre-deprivation hearing would
13 not be necessary under those circumstances. Where detention is mandatory, a pre-detention
14 hearing would serve no purpose because release is not legally available. *Calderon v. Noem*, No.
15 2:25-cv-2136, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025) (“The cases cited by Mr.
16 Calderon are inapposite because none of them involved mandatory detention (under the LRA or
17 otherwise).”). “Accordingly, a pre-detention hearing could only have one outcome: detention.”
18 *Id.*

19 In sum, this Court should not order the requested injunctive relief as it relies on
20 speculation.

21 **B. Even if this Court were to enjoin Petitioner’s re-detention without a pre-**
22 **deprivation hearing, due process does not require the Government to bear the burden of**
23 **proof at such a hearing.**

1 No Supreme Court case has ever required the Government to justify immigration
2 detention by clear and convincing evidence. Even if this Court should order Petitioner's
3 release, this Court should not grant his request to enjoin her re-detention "absent written notice
4 and a hearing prior to re-detention where Respondents must prove by clear and convincing
5 evidence that he is a flight risk or danger to the community and that no alternatives to detention
6 would mitigate those risks" Pet., Prayer for Relief. The Constitution does not require the
7 government to bear the burden of proof at a pre-deprivation hearing. Simply put, the Supreme
8 Court has *always* affirmed the constitutionality of detention pending removal proceedings,
9 notwithstanding that the government has *never* borne the burden to justify such detention by
10 clear and convincing evidence. *See, e.g., Demore v. Kim*, 538 U.S. 510, 522, 532 (2003);
11 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) ("We are aware of no Supreme
12 Court case placing the burden on the government to justify the continued detention of [a
13 noncitizen], much less through an elevated 'clear and convincing' showing."). In fact, even
14 when considering a noncitizen subjected to potentially indefinite detention after the conclusion
15 of removal proceedings, the Supreme Court has placed the burden on the noncitizen, as opposed
16 to the Government, to justify release. *See Zadvydas v. Davis*, 533 U.S. 678, 701(2001). Thus,
17 the Court should not order ICE to bear the burden of proof at a pre-deprivation, if one were to
18 be ordered. At most, the Government should be required to demonstrate dangerousness or flight
19 risk by a preponderance of the evidence in line with the immigration officer's initial
20 determination. 8 C.F.R. § 1236.1(c)(8).

21 In addition to placing a heightened burden on the Government, Petitioner also seeks to
22 unnecessarily require the Government to demonstrate that no "alternatives to detention" would
23 mitigate the danger or risk of flight at a pre-deprivation hearing. But even for criminal alien
24 detainees subjected to prolonged mandatory detention, the Ninth Circuit did not expand the

1 procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which is considered
2 “the high-water mark of procedural protections required by due process,” to include a
3 consideration of alternatives to detention for those found to be a danger to their community.
4 *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

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

9 **C. Petitioner’s requested limitations on GPS ankle monitors should be denied.**

10 Petitioner’s request to enjoin Federal Respondents from placing a GPS ankle monitor
11 “absent clear and convincing evidence that Petitioner is a flight risk or danger to the community
12 and that no other alternatives would mitigate those risks” should be denied. Pet., Prayer for
13 Relief.

14 Federal Respondent’s recognize that a court in this District has found that imposition of
15 an ankle monitor violated due process. *Palacio v. Hermosillo*, No. C25-1983-RSM-MLP, 2025
16 WL 4033287, at *3 (W.D. Wash. Dec. 22, 2025), *report and recommendation adopted sub nom.*
17 *Quiva Palacio v. Wamsley*, No. C25-1983-RSM-MLP, 2026 WL 84930 (W.D. Wash. Jan. 12,
18 2026). However, this case is distinguishable. In *Palacio*, there were specific facts about the
19 ankle monitor imposition that had already been raised presented a live controversy. *Palacio* at
20 *2. In this case, Petitioner has not submitted any affidavit, nor are any facts alleged about
21 imposition of an ankle monitor sufficient to raise a controversy. See *Abdala v. I.N.S.*, 488 F.3d
22 1061, 1064 (9th Cir. 2007). The GPS ankle monitor was raised for the first time in the Prayer
23 for Relief. Pet., Prayer for Relief.

1 Furthermore, no requirement for clear and convincing evidence of danger or flight risk is
2 included in the immigration statutes of release which allow DHS to impose conditions. *See e.g.*,
3 8 U.S.C. §§ 1182(d)(5), 1226(a)(2).

4 Accordingly, Petitioner's request should be denied.

5 **CONCLUSION**

6 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
7 the Petition.

8 DATED this 30th day of January, 2026.

9 Respectfully submitted,

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22 *I certify that this memorandum contains 2,608*
23 *words, in compliance with the Local Civil Rules.*