

District Judge Richard A. Jones

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

A.K.,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:26-cv-00160-RAJ

FEDERAL RESPONDENTS'¹ RETURN

Noted For Consideration:
February 4, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner A.K. at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1225(b). In 2022, U.S. Border Patrol ("USBP") encountered Petitioner shortly after he unlawfully entered the United States. Initially Petitioner was released on temporary parole, followed by an order of recognizance ("OREC"). Petitioner was also placed on alternatives to detention that required biometric check-ins. After violating his alternatives to detention several times, ICE re-detained Petitioner on December 27, 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 12-14. He asks
3 this Court to order his release and “permanently” enjoin his 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.” *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 A.K.

11 Petitioner is a citizen of Russia who entered the United States without inspection or
12 parole on or about December 26, 2022 and was apprehended shortly thereafter by U.S. Border
13 Patrol (“USBP”). Pet., ¶¶ 28, 31; Declaration of Deportation Officer Javier Delgado (“Delgado
14 Decl.”), ¶ 3. USBP determined that Petitioner was inadmissible, but he was released on
15 temporary humanitarian parole due to detention capacity and directed to report to an ICE office
16 for further immigration processing. Delgado Decl., ¶ 4; Declaration of Jordan Steveson
17 (“Steveson Decl.”), Exh. A, Temporary Parole; Exh. B, 2022 I-213. The temporary parole
18 expired on February 27, 2023. Steveson Decl., Exh. A., Temporary Parole.

19 On January 17, 2023, immigration authorities placed Petitioner on an order of release on
20 recognizance (“OREC”). Delgado Decl., ¶ 5. On May 24, 2023, ICE issued a Notice to Appear
21 (“NTA”) to Petitioner. Steveson Decl., Exh. C, NTA. The NTA charges Petitioner as removable
22 pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

1 On July 18, 2024, ICE enrolled Petitioner into the Alternatives to Detention Program.
2 Delgado Decl., ¶ 8. Petitioner missed biometric check-ins six times. Delgado Decl., ¶ 9. On
3 December 27, 2025, Petitioner was detained by ICE due to ATD violations and transferred to
4 the Northwest ICE Processing Facility. Delgado Decl., ¶ 10; Steveson Decl., Exh. D, 2025 I-
5 213.

6 Petitioner is scheduled for a merits hearing on his application for relief on February 27,
7 2026. Delgado Decl., ¶ 11.

8 **B. Legal Background**

9 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that
10 the Executive could “expedite removal of aliens lacking a legal basis to remain in the United
11 States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v.*
12 *Thuraissigiam*, 591 U.S. 103, 106 (2020). Section 1225 applies to “applicants for admission” to
13 the United States, who are defined as “[a]n alien present in the United States who has not been
14 admitted or who arrives in the United States (whether or not at a designated port of arrival and
15 including an alien who is brought to the United States after having been interdicted in
16 international or United States waters).” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall
17 into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),”
18 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).

20 All applicants for admission are inspected. 8 U.S.C. 1225(b). DHS has discretion to
21 pursue expedited removal under Section 1225(b)(1) or it can apply Section 1225(b)(2) and seek
22 removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523-524 (BIA
23 2011). If the immigration authority determines that the noncitizen being inspected is
24 inadmissible, then Section 1225(b)(2) is applied. *Jennings*, 583 U.S. at 288.

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

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

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

18 **III. ARGUMENT**

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

20 The plain language of the statute is clear: Petitioner is subject to mandatory detention
 21 under Section 1225(b) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29
 22 I. & N. Dec. 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory detention of “an
 23 alien who is an applicant for admission, if the examining immigration officer determines that an
 24 alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C.

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

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

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

1 for any future proceeding.” In contrast, Section 1236.1(c)(9) does not require such a
2 determination and specifically provides that “release may be revoked at any time.” Here,
3 Petitioner is subject to mandatory detention. Thus, analysis of his potential flight risk or
4 dangerousness would be immaterial, and a hearing would be futile.

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

20 The Government has a heightened interest in the immigration detention context.
21 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the
22 Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
23 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez*
24 *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it

1 comes to determining whether removable aliens must be released on bond during the pendency
2 of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. Accordingly, due process does not
3 require a pre-deprivation hearing in all circumstances where individuals are detained after being
4 released, including for Petitioner here.

5 This Court should further deny Petitioner’s request that a pre-detention hearing be
6 required for any future detention. This request is speculative and not ripe for review. This
7 request presumes that Petitioner will be released and then re-detained at some point. This Court
8 has no way to foresee what circumstances may lead to a purported redetention. For example,
9 Petitioner could commit a criminal offense that makes his detention mandatory under the Laken
10 Riley Act. A pre-deprivation hearing would not be necessary under those circumstances. Or he
11 could be ordered removed and be subject to mandatory detention for removal purposes under 8
12 U.S.C. § 1231(a). Where detention is mandatory, a pre-detention hearing would serve no
13 purpose because release is not legally available. *Calderon v. Noem*, No. 2:25-cv-2136, 2025
14 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025) (“The cases cited by Mr. Calderon are
15 inapposite because none of them involved mandatory detention (under the LRA or
16 otherwise).”). “Accordingly, a pre-detention hearing could only have one outcome: detention.”
17 *Id.*

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

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

23 No Supreme Court case has ever required the Government to justify immigration
24 detention by clear and convincing evidence. Even if this Court should order Petitioner’s

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

19 In addition to placing a heightened burden on the Government, Petitioner also seeks to
20 unnecessarily require the Government to demonstrate that no “alternatives to detention” would
21 mitigate the danger or risk of flight at a pre-deprivation hearing. But even for criminal alien
22 detainees subjected to prolonged mandatory detention, the Ninth Circuit did not expand the
23 procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which is considered
24 “the high-water mark of procedural protections required by due process,” to include a

1 consideration of alternatives to detention for those found to be a danger to their community.
2 *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

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

7 **CONCLUSION**

8 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
9 the Petition.

10 DATED this 30th day of January, 2026.

11 Respectfully submitted,

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13 United States Attorney

14 s/ Jordan C. Steveson

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20 *I certify that this memorandum contains 2,324
words, in compliance with the Local Civil Rules.*