

District Judge Kymberly K. Evanson

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

M-Z-H,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02523-KKE

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
December 22, 2025.

I. INTRODUCTION

Petitioner M-H-Z, a citizen of Afghanistan with no legal status in the United States, is currently detained at the Northwest ICE Processing Center (NWIPC). U.S. Customs and Border Patrol (CBP) encountered Petitioner in the San Diego area and determined he entered the United States from Mexico without being inspected, admitted, or paroled. Petitioner was then issued a NTA and taken into custody. Petitioner was later released on an Order of Recognizance (OREC), with reporting requirements and other conditions of release, due to a lack of bedspace. In January 2024, Petitioner moved to Portland, Oregon, without informing Immigration and Customs Enforcement (ICE), which was a violation of his Order of Recognizance. As a result, Petitioner was then required to enroll in the Alternative to Detention (ATD) program as a condition of his

1 ongoing release.

2 On February 20, 2025, Petitioner was contacted by ICE Office of Enforcement and
3 Removal Operations (ERO) by phone for a biometric check-in pursuant to the Alternative to
4 Detention program, which Petitioner can complete using his cellphone. Petitioner failed to check-
5 in when prompted as required. ERO logged the ATD violation after determining that Petitioner
6 intentionally missed the check-in. Failure to check-in as required was Petitioner's second OREC
7 violation.

8 On November 11, 2025, Petitioner was taken into custody by CBP and transported to ERO
9 Portland for further processing. That same day, Petitioner's OREC was revoked due to the ATD
10 violation which violated the conditions of his release. Petitioner was then transported to the
11 NWIPC in Tacoma, Washington. Petitioner remains detained at the NWIPC pursuant to 8 U.S.C.
12 § 1225(b).

13 Pursuant to this Court's Order (Dkt. 11), Federal Respondents submit the following
14 factual background as contained in Petitioner's immigration records, as well as the relevant
15 detention authority. Federal Respondents do not request an evidentiary hearing in this case.

16 I. LEGAL STANDARD

17 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
18 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that he is being
19 held in custody in violation of the Constitution, laws, or treaties of the United States. *See* 28
20 U.S.C. § 2241(c)(3).

21 II. DETENTION AUTHORITIES

22 A. Expedited Removal Proceedings, Mandatory Detention, and Temporary Parole

23 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
24 Executive could "expedite removal of aliens lacking a legal basis to remain in the United States."

1 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*,
2 591 U.S. 103, 106 (2020). Section 1225 applies to “applicants for admission” to the United States,
3 who are defined as “[a]n alien present in the United States who has not been admitted or who
4 arrives in the United States (whether or not at a designated port of arrival and including an alien
5 who is brought to the United States after having been interdicted in international or United States
6 waters).” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those
7 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
8 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*,
9 29 I&N Dec. 216 (BIA 2025).

10 An applicant for admission is subject to expedited removal if, as relevant here, the
11 applicant (1) is inadmissible under 8 U.S.C. § 1182(a)(7)(C) (noncitizens without valid entry
12 documents); (2) has not “been physically present in the United States continuously for the 2-year
13 period immediately prior to the date of the determination of inadmissibility”; and (3) is among
14 those whom the Secretary of Homeland Security has designated for expedited removal.
15 §§ 1225(b)(1)(A)(i), (iii)(I)–(II).¹ Once “an immigration officer determines” that a designated
16 applicant is inadmissible under 8 U.S.C. § 1182(a)(7)(C) “the officer [must] order the alien
17 removed from the United States without further hearing or review.” § 1225(b)(1)(A)(i).

18 Expedited removal proceedings under Section 1225(b)(1) include additional procedures
19
20

21 ¹ The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal
22 under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to “the
23 fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).
24 The notice thus enables the Department of Homeland Security (“DHS”) “to place in expedited removal, with limited
exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been
admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration
officer, that they have been physically present in the United States continuously for the two-year period immediately
preceding the date of the determination of inadmissibility,” who were not otherwise covered by prior designations.
Id., at 8139-40.

1 if a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
2 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
3 the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed
4 from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
5 (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
6 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
7 removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8
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
9 (A.G. 2019). Ultimately, DHS has discretion to pursue expedited removal under
10 Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec.
11 520, 524 (BIA 2011).

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

19 **B. Revocation of Discretionary Release from Detention**

20 8 C.F.R. § 1236.1(c)(8) provides that "[a]ny officer authorized to issue a warrant of arrest
21 may, in the officer's discretion, release an alien . . . provided that the alien must demonstrate to
22 the satisfaction of the officer that such release would not pose a danger to property or persons,
23 and that the alien is likely to appear for any future proceeding." Section 236.1(c)(9) provides for
24 the revocation of such release: "When an alien who, having been arrested and taken into custody,

1 has been released, such release may be revoked at any time in the discretion of the district director,
2 acting district director, deputy district director, assistant district director for investigations,
3 assistant district director for detention and deportation, or officer in charge (except foreign), in
4 which event the alien may be taken into physical custody and detained.”

5 There is no statutory or regulatory requirement for a hearing before an individual is re-
6 detained, and the Supreme Court has warned courts against reading additional procedural
7 requirements into the Immigration and Nationality Act. *See Johnson v. Arteaga-Martinez*, 596
8 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. §
9 1231(a)(6) because “reviewing courts . . . are generally not free to impose [additional procedural
10 rights] if the agencies have not chosen to grant them”) (quoting *Vermont Yankee Nuclear Power*
11 *Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). Furthermore, DHS
12 is not restricted from rearresting noncitizens absent a change in circumstance. *See Matter of*
13 *Sugay*, 17 I&N. Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168,
14 1197 (N.D. Cal. 2017). (“[T]he district court never held that *Sugay* requires these hearings.”).
15 Other courts have recognized that *Sugay*’s dicta is not “binding on ICE.” *Bermudez Paiz v.*
16 *Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n.19 (S.D.N.Y. Dec. 27, 2018).

17 Federal Respondents acknowledge that district courts have recently decided that the
18 revocation of an order of recognizance (OREC) requires a pre-detention hearing to determine if
19 that noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No.
20 25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*,
21 --- F. Supp. 3d ---, No. 25-cv-01723-MJP-TLF, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept.
22 12, 2025). Respectfully, these decisions erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R.
23 § 1236.1(c)(8). *See id.* (imposing a determination set forth in Section (c)(8) into the discretionary
24 determination of revoking an OSUP in Section (c)(9)). Both Sections provide that the decisions to

1 release or revoke are discretionary. But Section 1231(c)(8) includes language requiring the officer
2 to decide that the alien “would not pose a danger to property or persons, and that the alien is likely
3 to appear for any future proceeding.” In contrast, Section 1231(c)(9) does not require such a
4 determination and specifically provides that “release may be revoked at any time.”

5 III. FACTUAL BACKGROUND²

6 Petitioner is a native and citizen of Afghanistan. Declaration of Gabriel Arambula
7 (“Arambula Decl.”) ¶ 3. On December 7, 2023, U.S. Border Patrol (CBP) encountered Petitioner
8 in the San Diego area and determined he entered the United States from Mexico without being
9 inspected, admitted, or paroled. *Id.* ¶ 4. Petitioner was issued a Notice to Appear charging him as
10 removable under INA § 212(a)(6)(A)(i), and scheduling for an initial immigration hearing before
11 the Sacramento Immigration Court. *Id.* ¶ 5. Petitioner was later released on an Order of
12 Recognizance, with reporting requirements and other conditions of release, due to a lack of
13 bedspace. *Id.* ¶ 6. In January 2024, Petitioner moved to Portland, Oregon, without informing
14 Immigration and Customs Enforcement (ICE), which was a violation of his Order of
15 Recognizance. *Id.* ¶ 7. As a result, Petitioner was then required to enroll in the Alternative to
16 Detention (ATD) program as a condition of his ongoing release. *Id.*

17 On February 20, 2025, Petitioner was contacted by ICE Office of Enforcement and
18 Removal Operations (ERO) by phone for a biometric check-in pursuant to the Alternative to
19 Detention program, which Petitioner can complete using his cellphone. *Id.* ¶ 9. Petitioner failed
20 to check-in when prompted as required. *Id.* ERO logged the ATD violation having determined
21 Petitioner intentionally missed the check-in. *Id.* Failure to check-in as required was Petitioner’s
22 second OREC violation. *Id.*

23
24 ² Due to the abbreviated briefing schedule, undersigned counsel was unable to obtain Petitioner’s Alien file (“A-
file”) from the United States Citizenship and Immigration Services – Records Section in Tukwila, Washington.

1 On November 11, 2025, Petitioner was taken into custody by CBP³ and transported to
2 ERO Portland for further processing. *Id.* ¶ 10. On the same day, Petitioner's OREC was revoked
3 pursuant to the ATD violation which violated the conditions of his release. *Id.* ¶ 11. Petitioner
4 was then transported to the NWIPC in Tacoma, Washington. Petitioner remains detained at the
5 NWIPC pursuant to 8 U.S.C. § 1225(b). *Id.*

6 Petitioner appeared with counsel at his last master calendar hearing on December 12,
7 2025, and was granted a continuance upon request. *Id.* ¶ 12. Petitioner's next master calendar
8 hearing is scheduled for December 31, 2025. *Id.* ¶ 13.

9
10 Dated this 17th day of December, 2025.

11 Respectfully submitted,

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13 United States Attorney

14 *s/ Alexandria K. Morris*

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I certify that this memorandum contains 1,902 words, in compliance with the Local Civil Rules.

³ Due to the abbreviated briefing schedule, Federal Respondents were unable to obtain a declaration from CBP.