

District Judge John H. Chun

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

IRSHAD AHMAD FAQERI,

Petitioner,

v.

TODD M. LYONS, *et al.*,

Respondents.

Case No. 2:26-cv-00003-JHC

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for consideration on:
January 26, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Petitioner Irshad Ahmad Faqeri pursuant to 8 U.S.C. § 1225(b)(1) as an arriving alien. Petitioner claims that his detention is unlawful and violates due process. Because he is detained pursuant to mandatory detention, Petitioner is not entitled to a bond hearing, and his approximate two-month detention does not trigger any due process concerns. Likewise, due process did not require a hearing prior to Petitioner’s detention after his parole had expired and, even if it had not expired, was automatically terminated upon the issuance of a notice to appear. To the extent that Petitioner

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

1 argues that his detention required a material change in circumstance since his arrival in the United
2 States, U.S. Citizenship and Immigration Services' ("USCIS") denials of his asylum application
3 and subsequent motion to reopen should qualify as such a circumstance.

4 Accordingly, this Court should deny the Petition.

5 II. BACKGROUND

6 Petitioner is a native and citizen of Afghanistan who was paroled into the United States on
7 August 23, 2021, as an Operation Allies Refugee. Andron Decl., ¶ 4; Pet., ¶ 11. After an automatic
8 extension, his parole's expiration date was August 22, 2025. Andron Decl., ¶ 8; Pet., ¶ 11;
9 Lambert Decl., Ex. A, [REDACTED].

10 Petitioner applied for asylum with USCIS in December 2022. Andron Decl., ¶ 6; Pet.,
11 ¶ 12. On April 26, 2024, USCIS denied his application. Andron Decl., ¶ 7; Pet., ¶ 13. USCIS
12 denied Petitioner's motion to reopen and reconsider his asylum application on August 13, 2025.
13 Pet., ¶ 16. Shortly thereafter, his parole expired. Andron Decl., ¶ 8.

14 On November 30, 2025, ICE arrested Petitioner. Andron Decl., ¶ 9; Lambert Decl., Ex. B,
15 [REDACTED]; Ex. C, [REDACTED]; Ex. D, [REDACTED]. U.S. Department
16 of Homeland Security ("DHS") issued Petitioner a [REDACTED] charging him with
17 inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Andron Decl., ¶ 10; Lambert Decl., Ex. E,
18 [REDACTED]. Petitioner is being detained at the Northwest ICE Processing Center while his
19 removal proceedings are ongoing. *See* Andron Decl., ¶ 11. His next appearance in immigration
20 court is scheduled for February 11, 2026. *Id.*, ¶ 13.

21 III. LEGAL STANDARD

22 "The district courts of the United States ... are courts of limited jurisdiction. They possess
23 only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopach Servs.,*
24 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been

1 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland*
2 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
3 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
4 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
5 or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
6 969 n.16 (9th Cir. 2004).

7 IV. ARGUMENT

8 A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b).

9 Petitioner is an arriving alien subject to mandatory detention pursuant to 8 U.S.C.
10 § 1225(b). 8 C.F.R. §§ 1.2 (definition of arriving alien), 235.3(c). Congress established the
11 expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could “expedite removal
12 of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558 U.S. 233,
13 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. at 106 (“[Congress]
14 crafted a system for weeding out patently meritless claims and expeditiously removing the aliens
15 making such claims from the country.”). Section 1225 applies to “applicants for admission” to the
16 United States, who are defined as “alien[s] present in the United States who [have] not been
17 admitted” or noncitizens “who arrive[] in the United States,” whether or not at a designated port
18 of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those
19 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to
20 mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

21 Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially
22 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.”
23 *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings under Section 1225(b)(1)

1 include additional procedures if a noncitizen indicates an intention to apply for asylum² or
2 expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. §
3 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration judge does not find
4 a credible fear, the noncitizen is "removed from the United States without further hearing or
5 review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R.
6 §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible
7 fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but
8 remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. §
9 1225(b)(1)(B)(iii)(IV).

10 Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from removal
11 under Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to
12 appear and conducted before an immigration judge, during which the noncitizen may apply for
13 relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,
14 statutorily defined circumstances and allows for their removal without a hearing before an
15 immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to
16 pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of E-R-M- & L-R-*
17 *M-*, 25 I&N Dec. 520, 524 (BIA 2011).

18 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
19 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings*, 583
20 U.S. at 283. This parole terminates automatically at the expiration of the time for which parole
21 was authorized, or upon service of a charging document for either expedited removal proceedings
22 under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. § 212.5(e)(1); (2)(i).

23 _____
24 ² Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except
if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.*
§ 1558(a)(2)(D).

1 Upon termination of parole, the applicant reverts to the status that he or she had at the time of
2 parole. *See id.*

3 Despite his mandatory detention status as an arriving alien under 8 U.S.C. § 1225(b)(1)
4 and the expiration of his parole, Petitioner asserts that DHS was required to provide him with a
5 pre-detention hearing prior to his November arrest.³ Pet., ¶ 67. Although Federal Respondents
6 acknowledge that district courts have found that due process requires pre-detention hearings prior
7 to re-detention of an alien, due process did not require a pre-detention hearing here.

8 “Due process is flexible and calls for such procedural protections as the particular situation
9 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1)
10 “the private interest that will be affected by the official action,” (2) “the risk of an erroneous
11 deprivation of such interest through the procedures used, and probable value, if any, of additional
12 or substitute procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

13 Federal Respondents recognize the “weighty liberty interests implicated by the
14 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
15 *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released
16 from immigration detention have a protected liberty interest in remaining out of custody, the
17 weight of that liberty must be considered in the broader picture of the immigration system, which
18 has long acknowledged that an alien has a lesser liberty interest than a citizen. After all, “[t]he
19 recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has
20 ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that
21 would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
22 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has

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24 ³ Petitioner’s cite to 8 U.S.C. § 1226(b) release is not relevant here (Pet., ¶ 67). Petitioner was paroled into the United States under Section 1182(d)(5), not Section 1226(b).

1 explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
2 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426
3 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during
4 deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*,
5 538 U.S. at 523.

6 While Petitioner has some liberty interest in his continued freedom from detention while
7 on parole, Petitioner had no liberty interest in remaining out of custody once his parole
8 automatically terminated when it expired in August 2025. Upon termination of parole, Petitioner
9 reverted to the status that he had at the time of parole – an arriving alien. 8 C.F.R. §§ 212.5(e)(1);
10 (2)(i). Accordingly, Petitioner had no liberty interest in his freedom after the termination of parole.

11 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
12 erroneous deprivation of Petitioner’s liberty here is low. Petitioner had notice of the date his parole
13 would expire. There is no question that as an arriving alien Petitioner is subject to mandatory
14 detention. The sole means of his release from detention was his parole under Section
15 1182(d)(5)(A). *Jennings*, 583 U.S. at 283. Thus, Petitioner was on clear notice that his release
16 from detention would cease after the expiration of his parole.

17 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
18 test and procedural safeguards “must account for the heightened government interest in the
19 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s
20 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government
21 clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation
22 of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is
23 especially true when it comes to determining whether removable aliens must be released on bond
24 during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government

likewise has an interest in protecting immigration proceedings from unnecessary delay, especially considering Congress’s purpose for enacting Section 1225(b) and require parole for release for arriving aliens.

Accordingly, Petitioner is lawfully detained as an arriving alien pursuant to 8 U.S.C. § 1225(b).

B. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of subject matter jurisdiction.

Petitioner seeks to challenge his detention on grounds that it violates Section 706(2)(A) of the Administrative Procedure Act (“APA”). Pet., ¶¶ 99-110. The Court has no subject matter jurisdiction to hear these claims.

Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C. § 704 (“Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review.”) (emphasis added). Simply put, “federal courts lack jurisdiction over APA challenges whenever Congress has provided another ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’ claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.*,

1 at 674; *cf. O'Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
2 "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *and*
3 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
4 ("Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
5 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.").

6 Moreover, to be reviewable under the APA an action must be a "final agency action,"
7 which is to say that it is the "consummation of the agency's decisionmaking process." *See Bennett*
8 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of removal
9 proceedings is not within that category because it is only an intermediary step in the process. *See*
10 *Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner's
11 claims based on alleged APA violations should be denied.

12 V. CONCLUSION

13 Accordingly, this Court should deny the Petition.

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1 DATED this 20th day of January, 2026.

2 Respectfully submitted,

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16 *I certify that this memorandum contains 2,187*
17 *words, in compliance with the Local Civil Rules.*