

Magistrate Judge S. Kate Vaughan

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

MARK STRAZH,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:26-cv-00064-SKV

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
January 27, 2026

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Mark Strazh pursuant to 8 U.S.C. § 1225(b)(1) as an arriving alien.

I. BACKGROUND

Petitioner is a native and citizen of Russia who applied for entry into the United States at the San Ysidro Port of Entry on September 26, 2023. Pet., ¶ 2; Andron Decl., ¶ 4; Lambert Decl., Ex. A, Form I-213. He was arrested and served with a Notice of Expedited Removal. Andron Decl., ¶ 4; Lambert Decl. Ex. B, Notice of Expedited Removal. ICE then took custody of Petitioner at the Otay Mesa Detention Center. Andron Decl., ¶ 4.

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

On October 31, 2023, U.S. Citizenship and Immigration Services (“USCIS”) conducted a credible fear interview of Petitioner. *Id.*, ¶ 5. Approximately a week later, USCIS determined that Petitioner met the standard for credible fear. *Id.*

On December 15, 2020, the Department of Homeland Security (“DHS”) issued Petitioner a notice to appear charging him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*, ¶ 6; Lambert Decl., Ex. C, Notice to Appear.

On December 23, 2023, ICE paroled Petitioner from detention pursuant to 8 U.S.C. § 1182(d)(5)(A), with the requirement that he be subject to parole reporting requirements such as Alternatives to Detention (“ATD”).² Lambert Decl., Ex. D, Notification to Grant Parole; Andron Decl., ¶ 7. On January 11, 2024, Petitioner was placed on an order of release on recognizance (“OREC”). *Id.*, ¶ 8; Lambert Decl., Ex. E, OREC. From November 2024 through December 2025, Petitioner missed thirty ATD check-ins. Andron Decl., ¶¶ 9-39. As a result of these ATD violations, ICE terminated Petitioner’s ATD and revoked his OREC. *Id.*, ¶ 40; Lambert Decl., Ex. E, at L62 (at bottom).

On December 27, 2025, ICE arrested Petitioner in Vancouver, Washington, and then transported him to the Northwest ICE Processing Center. Andron Decl., ¶ 40; Lambert Decl., Ex. F, Form I-213; Ex. G, Warrant for Arrest; Ex. H, Notice of Custody Determination.

Petitioner is next scheduled to appear before the Tacoma Immigration Court for a master hearing on February 11, 2026. Andron Decl., ¶ 41.

II. LEGAL STANDARD

“The district courts of the United States ... are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs.*,

² Undersigned counsel could not locate any documentation of when Petitioner’s parole expired or if the OREC replaced parole. However, parole is the only means of release from mandatory detention under Section 1225(b). *Jennings v. Rodriguez*, 583 U.S. 281, 283 (2018).

1 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
2 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland*
3 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
4 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
5 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
6 or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
7 969 n.16 (9th Cir. 2004).

8 III. ARGUMENT

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

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

20 Relevant here, Section 1225(b)(1) applies to “arriving aliens” and “certain other”
21 noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of
22 valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings
23 under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to
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1 apply for asylum³ or expresses a fear of persecution, torture, or return to the noncitizen's country.
 2 See 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration
 3 judge does not find a credible fear, the noncitizen is "removed from the United States without
 4 further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2);
 5 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a
 6 credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. §
 7 1229a, but remains subject to mandatory detention. See 8 C.F.R. § 208.30(f); 8 U.S.C. §
 8 1225(b)(1)(B)(iii)(IV).

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

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

22
 23
 24 ³ 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 Petitioner asserts that his re-detention without “a rational and individualized determination of
5 whether he is a safety or flight risk” violates due process. Pet., ¶ 63. Federal Respondents
6 acknowledge that district courts have recently decided that the revocation of pre-detention release
7 requires a pre-detention hearing to determine if that noncitizen is a flight risk or a danger to the
8 community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D.
9 Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723, 2025 WL 2637663, at
10 *2-4 (W.D. Wash. Sept. 12, 2025). Respectfully, Federal Respondents disagree with those
11 decisions. “Due process is flexible and calls for such procedural protections as the particular
12 situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Thus, this Court should not
13 apply a blanket procedural requirement but look at the specifics of each case. Petitioner is subject
14 to mandatory detention as an arriving alien. Because Petitioner is an arriving alien and he is no
15 longer released on parole or subject to an OREC, a pre-detention hearing would be futile.

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

18 Petitioner seeks to challenge his detention on grounds that it violates Section 706(2)(A) of
19 the Administrative Procedure Act (“APA”). Pet., ¶¶ 49-61. This Court lacks subject matter
20 jurisdiction to hear these claims.

21 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
22 § 704 (“Agency action made reviewable by statute and final agency action *for which there is no*
23 *other adequate remedy in a court* are subject to judicial review.”) (emphasis added). Simply put,
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1 “federal courts lack jurisdiction over APA challenges whenever Congress has provided another
2 ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

3 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
4 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
5 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating temporary restraining orders based on the
6 APA because the plaintiffs’ claims necessarily implied the invalidity of the plaintiffs’ confinement
7 and removal under the “Alien Enemies Act” and so had to be brought as habeas corpus claims in
8 the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion,
9 “[e]specially given the history and precedent of using habeas corpus to review transfer claims, and
10 given 5 U.S.C. § 704, which states that claims under the APA are not available when there is
11 another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is
12 the proper vehicle here.” *Id.*, at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350
13 (10th Cir. 2020) (holding that “habeas actions” provide an “adequate remedy” displacing APA
14 review under Section 704); *and see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2
15 (S.D.N.Y. June 19, 2018) (“Accordingly, because plaintiff could adequately remedy his conditions
16 of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide
17 his APA claim.”).

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

24 //

IV. CONCLUSION

Accordingly, this Court should deny the Petition.

DATED this 22nd day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 1,689 words, in compliance with the Local Civil Rules.