

District Judge Tana Lin

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

PARWIZ SARWARI,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:26-cv-00121-TL

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
February 2, 2026.

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner Parwiz Sarwari pursuant to 8 U.S.C. § 1225(b)(1) as an arriving alien. After he unsuccessfully applied for admission to the United States in 2023, Petitioner was placed in removal proceedings and paroled into the United States. ICE subsequently enrolled Petitioner in the Alternatives to Detention ("ATD") program, which imposed supervision requirements as terms of Petitioner's parole. ICE arrested Petitioner in December 2025 after multiple ATD violations.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement Laura Hermosillo for Camilla Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Petitioner incorrectly claims that his re-detention is unlawful and violates due process
2 because he was not provided with written notice and a pre-deprivation hearing. This claim fails
3 to look at this case individually. While Petitioner asks this Court to release him from immigration
4 detention, granting such relief would require this Court to ignore Petitioner's repeated violations
5 of the conditions of his release. *Martinez Hernandez v. Andrews*, No. 1:25-cv-01035, 2025 WL
6 2495767, at *12 (E.D. Cal. Aug. 28, 2025) (finding post-deprivation process adequate due to
7 ATD violations). Accordingly, this Court should deny the Amended Petition.

8 I. FACTUAL BACKGROUND

9 Petitioner is a native and citizen of Afghanistan. Declaration of Javier Delgado ("Delgado
10 Decl.") ¶ 3. On January 29, 2023, Petitioner was encountered by U.S. Customs and Border
11 Protection ("CBP") at or near El Paso, Texas. Delgado Decl. ¶ 4. CBP processed Petitioner for
12 Expedited Removal. *Id.* When Petitioner claimed fear, his claim was referred to U.S. Citizenship
13 and Immigration Services ("USCIS") for a credible fear interview. *Id.* Pending the USCIS
14 interview and determination, CBP paroled Petitioner into the United States and subsequently
15 enrolled him in the Alternatives to Detention ("ATD") program. *Id.*; Declaration of Alixandria
16 Morris ("Morris Decl."), Exs. 3-4 (Parole; OREC).

17 On June 23, 2023, Petitioner filed an application for relief with USCIS. *Id.* ¶ 5. Between
18 November 19, 2024, and December 16, 2025, Petitioner incurred eight ATD violations, including
19 missed office visits, failed home visits, a missed biometric check in, and a location services
20 disabled issue. *Id.* ¶ 6.

21 On December 25, 2025, ERO took Petitioner into custody in response to his multiple ATD
22 violations. *Id.* ¶ 7. Petitioner was still pending his credible fear interview as of the time of his
23 arrest. *Id.* Consequently, ERO issued Petitioner a Notice to Appear, placing him in full removal
24 proceedings and charging him as removable under Section 212(a)(7)(A)(i)(I) of the Immigration

1 and Nationality Act (“INA”). *Id.*; Morris Decl., Exs. 1, 2 (NTA; I-213). On the same day,
 2 Petitioner was transported to the NWIPC in Tacoma, Washington. Delgado Decl. ¶ 8. On January
 3 7, 2026, Petitioner appeared, with counsel, for a bond hearing. *Id.* ¶ 9. The immigration judge
 4 found Petitioner was subject to mandatory detention under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA
 5 2025). *Id.*

6 On January 22, 2026, Petitioner appeared, with counsel, for an initial master calendar
 7 hearing. *Id.* ¶ 10. The immigration judge set Petitioner’s case to a final merits hearing on February
 8 10, 2026, based on the application for relief filed in June 2023. *Id.* ¶ 10.

9 II. LEGAL STANDARD

10 “The district courts of the United States ... are courts of limited jurisdiction. They possess
 11 only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopach Servs.,*
 12 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
 13 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of*
 14 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides
 15 district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas
 16 corpus, the burden is on the petitioner to prove that his or his custody is in violation of the
 17 Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v.*
 18 *Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

19 III. ARGUMENT

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

21 Petitioner is an arriving alien subject to mandatory detention pursuant to 8 U.S.C.
 22 § 1225(b). 8 C.F.R. §§ 1.2 (definition of arriving alien), 235.3(c). Congress established the
 23 expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could “expedite
 24 removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558

1 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 (“[Congress] crafted a system for
 2 weeding out patently meritless claims and expeditiously removing the aliens making such claims
 3 from the country.”). Section 1225 applies to “applicants for admission” to the United States, who
 4 are defined as “alien[s] present in the United States who [have] not been admitted” or noncitizens
 5 “who arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. §
 6 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by §
 7 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention.
 8 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

9 Relevant here, Section 1225(b)(1) applies to “arriving aliens” and “certain other”
 10 noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of
 11 valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings
 12 under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to
 13 apply for asylum³ or expresses a fear of persecution, torture, or return to the noncitizen’s country.
 14 *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration
 15 judge does not find a credible fear, the noncitizen is “removed from the United States without
 16 further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2);
 17 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a
 18 credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. §
 19 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. §
 20 1225(b)(1)(B)(iii)(IV).

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

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

16 Petitioner does not dispute that he is an arriving alien subject to mandatory detention.
17 Instead, he challenges his re-detention in December 2025 as violative of procedural due process.
18 *Pet.*, ¶¶ 44-46. Petitioner asserts that DHS was required to provide him with written notice and a
19 pre-detention hearing before a neutral arbiter. *Id.*, ¶ 46. Although Federal Respondents
20 acknowledge that district courts have found that due process requires pre-detention hearings prior
21 to re-detention of an alien, as described below, due process did not require a pre-detention hearing
22 here. Accordingly, this Court should not grant Petitioner’s request for immediate release from
23 immigration detention.

B. Petitioner's re-detention did not require a pre-deprivation hearing to comply with due process.

A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous was not required prior to his arrest in September 2025. Pet., ¶¶ 44-46. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35. As described below, the facts in this situation do not support a blanket requirement of written notice and a hearing prior to Petitioner's detention.

Due process does not mandate a pre-detention hearing here. As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).

As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Thus, Federal Respondents acknowledge that Petitioner had some liberty interest in his continued freedom from detention

1 while on parole. While Petitioner possessed a conditional liberty interest while on parole, that
2 interest was expressly contingent on compliance with ATD conditions. His repeated violations
3 substantially reduced the weight of that interest.

4 Importantly, as an arriving alien who was paroled into the United States, Supreme Court
5 precedent requires a “legal fiction” to be imposed on Petitioner so that she is treated as at the
6 threshold of entry – as opposed to within this country's borders[.]” *Thuraissigiam*, 591 U.S. at
7 107. As a result, Petitioner remains in a fundamentally different and less protected position than
8 “those who are within the United States after an entry, irrespective of its legality.” *Leng May Ma*
9 *v. Barber*, 357 U.S. 185, 187 (1958).

10 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
11 erroneous deprivation of Petitioner’s liberty did not necessitate a pre-deprivation hearing. The
12 Supreme Court has held that “the Constitution requires some kind of hearing *before* the State
13 deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis
14 in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing
15 is not appropriate in every situation. *Id.*, at 128 (noting there may be “special case[s]” where a
16 pre-deprivation hearing is impracticable). Petitioner’s re-detention qualifies as a special case due
17 to his ATD violations.

18 In *Martinez Hernandez v. Andrews*, the district court found that allegations of ATD
19 violations that “are not obviously pretextual as in *E.A.T.-B*”⁴ provided at least an arguable basis
20 “that providing [the petitioner] with notice and a pre-deprivation hearing would have been
21 impracticable and/or would have motivated his flight.” *Martinez Hernandez*, 2025 WL 2495767,
22 at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous
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24 ⁴ *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

1 deprivation could be reduced through a “prompt, post-deprivation process.” *Id.* (collecting cases).

2 There is no need for an evidentiary hearing to determine Petitioner’s status as an arriving
3 alien – as that would not change from his initial entry. To wit, a pre-deprivation hearing would
4 be futile as his detention is based on his mandatory detention. An analysis of Petitioner’s
5 dangerousness or flight risk is likewise not relevant. However, if this Court were to order a
6 hearing, Petitioner should not be released as his ATD violations provided ICE with a basis to
7 arrest him without notice, and Petitioner should be provided with a post-deprivation hearing.

8 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
9 test and procedural safeguards “must account for the heightened government interest in the
10 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme
11 Court’s 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the
12 government clearly has a strong interest in preventing aliens from ‘remain[ing] in the United
13 States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at
14 518). “This is especially true when it comes to determining whether removable aliens must be
15 released on bond during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at
16 1208. The government likewise has an interest in protecting immigration proceedings from
17 unnecessary delay.

18 Federal Respondents acknowledge that district courts have found that the revocation of
19 parole (or an OREC) requires a pre-deprivation hearing to determine if that noncitizen is a flight
20 risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL
21 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No.
22 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025).

23 However, “[a] decision of a federal district court judge is not binding precedent in either
24 a different judicial district, the same judicial district, or even upon the same judge in a different

1 case.” *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (internal quotations omitted). While
2 *Camreta* arose in the qualified-immunity context, the Court’s reasoning applies with equal force
3 here.

4 Here, Petitioner is subject to mandatory detention as an arriving alien. Where detention is
5 mandatory, a pre-detention hearing would serve no purpose because release is not legally available.
6 *Calderon v. Noem*, No. 2:25-cv-2136, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025)
7 (“The cases cited by Mr. Calderon are inapposite because none of them involved mandatory
8 detention (under the LRA or otherwise).”) “Accordingly, a pre-detention hearing could only have
9 one outcome: detention.” *Id.* Accordingly, Petitioner is lawfully detained, and this Court should
10 deny his request for release from immigration custody.

11 IV. CONCLUSION

12 For the foregoing reasons, this Court should deny the Petition.

13 Dated this 28th day of January, 2026.

14 Respectfully submitted,

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23 I certify that this memorandum contains 2,401
24 words, in compliance with the Local Civil Rules.