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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Tahjay Romell Williams,

Petitioner,

v.

Unknown Party, *et al.*

Respondents.

No. CV-26-02759-PHX-DWL (DMF)

**RESPONSE PETITION FOR WRIT
OF HABEAS CORPUS**

Respondents, by and through undersigned counsel, hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1) and the Court's Order (Doc. 3).

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Jamaica who entered the United States on or about February 10, 2023, without admission, inspection, or parole. Ex. A, Record of Deportable/Inadmissible Alien (Feb. 10, 2023), at 2. Petitioner was encountered within 100 yards of the border after entry. *Id.* After processing by U.S. Border Patrol, Petitioner was released on an Order of Release on Recognizance ("OREC"). Ex. B, Order of Release on Recognizance. The same day, Petitioner was placed into proceedings via issuance of a

1 Notice to Appear (“NTA”) under INA § 212(a)(6)(A)(i) as an alien present without being
2 admitted or paroled after inspection. Ex. C, Notice to Appear, at 1.

3 On March 5, 2024, an Immigration Judge (“IJ”) ordered Petitioner removed to
4 Jamaica. Ex. D, Record of Deportable/Inadmissible Alien (Aug. 20, 2025), at 3. Petitioner
5 timely appealed. On August 30, 2025, Petitioner was served a Warrant for Arrest of Alien
6 and taken back into ICE custody. Ex. E, Warrant for Arrest of Alien. Petitioner was arrested
7 as part of a targeted enforcement action effectuated at his place of employment. Ex. D at
8 3. On February 11, 2026, the Board of Immigration Appeals remanded Petitioner’s case
9 back to the IJ. Doc. 1 at 25-26. On March 26, 2026, Petitioner was again ordered removed
10 to Jamaica by the IJ. Ex. E, Order of the Immigration Judge. Petitioner timely appealed on
11 April 7, 2026. Doc. 1 at 27-28.

12 **II. PETITIONER HAS NOT EXHAUSTED HIS ADMINISTRATIVE**
13 **REMEDIES.**

14 Petitioner was originally detained under 8 U.S.C. § 1226 and granted OREC with
15 conditions. Ex. B. Upon re-detention, Petitioner has not requested a bond hearing nor has
16 there been a decision by an IJ regarding Petitioner’s eligibility for bond.

17 The Ninth Circuit has held that a Petitioner should exhaust administrative remedies
18 by appealing the bond order to the BIA prior to filing a habeas petition. *Leonardo v.*
19 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)(citing *Rojas-Garcia v. Ashcroft*, 339 F.3d
20 814, 819 (9th Cir. 2003)(“a petitioner ‘must exhaust administrative remedies before
21 raising... constitutional claims in a habeas petition when those claims are reviewable by
22 the BIA on appeal.”)). If there is no exhaustion, “a district court should ordinarily either
23 dismiss the petition without prejudice or stay the proceedings until the petitioner has
24 exhausted remedies, unless exhaustion is excused.” *Leonardo*, 646 F.3d at 1160. Where
25 the BIA is empowered to reverse or remand a finding of an IJ, the proper avenue is to
26 appeal first at the BIA. *Sharma v. Archembrault*, 26-C513-BAS-SBC, 2026 WL 381611,
27 at *2 (S.D. Cal. Feb. 11, 2026). Bypassing this already established procedure encourages
28 detainees who disagree with their bond outcome to directly appeal these determinations

1 from the IJ to the federal district court. *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
2 5802013 at *2; See also *Fernandes v. Warden, Otay Mesa Det. Ctr.*, 2026 U.S. Dist. LEXIS
3 81800 at *6 (S.D. Cal Apr. 14, 2026).

4 Petitioner appears to be detained under § 1226(a) based on his initial apprehension and
5 release on OREC. While he argues that he has been denied a bond hearing by ICE, ICE is
6 not the proper entity to request a bond hearing, rather the request should be made to the
7 Executive Office for Immigration Review. Petitioner has not availed himself of this
8 process. Respondents do not oppose an order for a bond hearing with an IJ.

9 **III. PETITIONER DOES NOT HAVE A FINAL ORDER OF REMOVAL.**

10 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
11 678 (2001) because his removal is not “reasonably foreseeable.” However, *Zadvydas*,
12 which analyzed detention under 8 U.S.C. § 1231, is applicable only to an alien who has
13 been ordered removed and is subject to a final removal order under that statute. These
14 aliens must be detained for 90 days once their removal order becomes administratively
15 final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A).

16 An order of removal becomes administratively final “upon dismissal of the appeal
17 by the Board of Immigration Appeals.” 8 C.F.R. § 1241.1(a). Under 8 U.S.C. § 1231, an
18 administratively final order triggers a ninety-day removal period. The *Zadvydas* Court held
19 that a six-month detention period after the initial removal period was presumptively
20 reasonable. 533 U.S. 678, 701. Upon the expiration of the six-month period, the alien must
21 show that there is “good reason to believe that there is no significant likelihood of removal
22 in the reasonably foreseeable future.” *Id.*

23 Although Petitioner was ordered removed on March 26, 2026, Petitioner filed an
24 appeal which remains pending. Petitioner is not subject to an administratively final order
25 of removal. Therefore, Petitioner is not entitled to release under *Zadvydas*.

26 **IV. PETITIONER IS NOT ENTITLED TO A HEARING BEFORE HE IS**
27 **DETAINED.**

28 Petitioner is not entitled to any procedure beyond that prescribed by statute, and no

1 statute grants him the right to such a hearing. Mandatory authority also forecloses
2 Petitioner's claim to a protected liberty interest that could trigger substantive due process
3 protections. Even if Petitioner had a protected liberty interest, the *Mathews* test favors
4 Respondents in this matter. Thus, the Petition should be denied.

5 Petitioner's claim to procedural due process rights must fail because he is
6 considered legally not to have entered the United States, even though he is physically
7 present here. "[I]mmigration laws have long made a distinction between those aliens who
8 have come to our shores seeking admission . . . and those who are within the United States
9 after an entry[.]" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Those who have
10 entered have "additional rights and privileges not extended to those in the former category
11 who are merely on the threshold of initial entry." *Id.* (quoting *Shaughnessy v. United States*
12 *ex rel. Mezei*, 345 U.S. 206, 212 (1953)). The Fifth Amendment right to procedural due
13 process is one such "right or privilege" that does not apply to those who have not entered
14 the United States. *Zadvydas*, 533 U.S. at 693 (citing *United States v. Verdugo-Urquidez*,
15 494 U.S. 259, 269 (1990)). Thus, aliens who have not entered the United States have only
16 the procedural rights granted to them by Congress. *Angov v. Lynch*, 788 F.3d 893, 898 (9th
17 Cir. 2016) ("[P]rocedural due process [for non-admitted aliens] is simply whatever the
18 procedure authorized by Congress happens to be.") (quoting *Shaughnessy*, 345 U.S. at 212)
19 (internal quotation marks and alteration omitted).

20 Petitioner is considered not to have entered the United States, because he was
21 apprehended shortly after entry and found to be inadmissible. Because of this, the "entry
22 fiction" doctrine holds that he is entitled only to those procedures granted him by statute
23 because he is not entitled to procedural due process protections. *Angov*, 788 F.3d at 898;
24 *Zadvydas*, 533 U.S. at 693 (citing *Verdugo-Urquidez*, 494 U.S. at 269). Thus, Petitioner's
25 procedural due process claim must be denied.

26 Even if Petitioner had a protected liberty interest that the Due Process Clause would
27 protect, Petitioner would still not be entitled to a hearing before being re-detained. Courts
28 that have chosen to make substantive due process analyses in the immigration context have

1 generally applied the three-part test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See*,
2 *e.g.*, *Singh v. Andrews*, No. No. 1:25-cv-00801-KES-SKO (HC), 2025 U.S. Dist. LEXIS
3 132500, at *17 (E.D. Cal. July 11, 2025) (applying *Mathews*). Under this test, courts must
4 consider “the private interest that will be affected by the official action,” “the risk of an
5 erroneous deprivation of such interest through the procedures used” and any value that
6 additional safeguards might provide, and “finally, the government's interest, including the
7 function involved and the fiscal and administrative burdens that the additional or substitute
8 procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

9 The first factor favors Respondents. The Supreme Court has long recognized that
10 due process as applied to aliens in matters related to immigration does not require the same
11 strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when
12 exercising its “broad power over naturalization and immigration, Congress regularly makes
13 rules regarding aliens that would be unacceptable if applied to citizens.” *Diaz*, 426 U.S. at
14 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are
15 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.
16 at 718 (Kennedy, J., dissenting)). Accordingly, the Ninth Circuit has recognized that
17 individuals subject to immigration detention possess liberty interests that are less than full.
18 *See Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner’s
19 liberty interest is lesser because he is an applicant for admission, this factor does not
20 indicate that Petitioner must be afforded a pre-detention hearing.

21 The second *Mathews* factor also favors Respondents. Under the existing procedures,
22 aliens including Petitioner face little risk of erroneous deprivation. Petitioner has been
23 placed in removal proceedings and is eligible for a bond hearing as well as quarterly
24 custody reviews. An alien has the opportunity to explain why they are not a flight risk or
25 danger. Thus, these procedures are more than adequate and unquestionably provide
26 Petitioner notice and opportunity to be heard during his detention.

27 The third *Mathews* factor—the value of additional safeguards relative to the fiscal
28 and administrative burdens that they would impose—weighs heavily in favor of

1 Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation
2 hearing—adds little value to the system already in place in which she can pursue her claims
3 for relief claim in front of an immigration judge. Petitioner's proposed safeguard would
4 disrupt the removal process. Because the hearing Petitioner proposes would, by definition,
5 involve a non-detained individual, there would be hurdles to efficiently scheduling a
6 hearing. There is no administrative process in place for giving an alien who is not detained
7 a hearing resembling a bond hearing before an immigration judge. Petitioner's proposed
8 safeguard presents an unworkable solution to a situation already addressed by the current
9 procedures.

10 **V. CONCLUSION.**

11 For the foregoing reasons, Respondents respectfully request that this Court order a
12 bond hearing within the next ten (10) days or deny the Petition. (Doc. 1).

13 RESPECTFULLY SUBMITTED this 7th day of May, 2026.

14 TIMOTHY COURCHAINED
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17 s/ Tracy Riley
18 TRACY RILEY
19 Special Assistant United States Attorney
20 *Attorneys for the United States*
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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2026, I mailed the attached document via U.S. Mail
to:

Tahjay Romell Williams
A 
Florence Correctional Center
1100 N. Bowling Rd.
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s/ M. Beickert
United States Attorney's Office