

Chief District Judge David G. Estudillo

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

VADIM ZAVORIN,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,¹

Respondents.

Case No. 2:26-cv-00173-DGE

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
February 4, 2026

Pursuant to this Court's Order (Dkt. No. 2), Federal Respondents submit the following factual background as contained in the records of Petitioner Vadim Zavorin's immigration case, as well as the relevant detention authority.

I. DETENTION AUTHORITY

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2)(A). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, a petitioner must demonstrate that

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Laura Hermosillo for Camilla Wamsley.

² Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

1 he is being held in custody in violation of the Constitution, laws, or treaties of the United States.

2 *See* 28 U.S.C. § 2241(c)(3).

3 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
4 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
5 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
6 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
7 and expeditiously removing the aliens making such claims from the country.”). Section 1225
8 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
9 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
10 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
11 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
12 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S.
13 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

14 Petitioner is an arriving alien. Thus, “for aliens arriving in and seeking admission into the
15 United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the
16 INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”
17 *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (citing *Jennings*, 583 U.S. at 299).

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);
23 (2)(i). Upon termination of parole, the applicant reverts to the status that he or she had at the time
24 of parole. *See id.*; *see also* 8 C.F.R. § 1.2 (“An arriving alien remains an arriving alien even if

1 paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or
2 revoked.”).

3 II. FACTUAL BACKGROUND

4 Petitioner is a citizen of Russia who applied for admission into the United States from
5 Mexico at the San Ysidro, California, Port of Entry, on November 5, 2022. Reed Decl., ¶¶ 4-5.
6 Border Patrol served Petitioner with a notice to appear charging him as DHS issued Petitioner a
7 notice to appear charging him as inadmissible pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). Reed
8 Decl., ¶ 5; Lambert Decl., Ex. A, Form I-213; Ex. B, Notice to Appear. Border Patrol paroled
9 Petitioner into the United States because he was with his minor child. Reed Decl., ¶ 5; Lambert
10 Decl., Ex. C, Parole Information.³

11 On February 18, 2023, ICE issued Petitioner a new notice to appear, which superseded the
12 previous notice to appear. Reed Decl., ¶ 6; Lambert Decl., Ex. D, Notice to Appear. Petitioner
13 has filed an application for relief from removal with the Executive Office of Immigration Review
14 (“EOIR”). Reed Decl., ¶ 9. On October 17, 2023, an immigration judge sustained the charge of
15 removability and directed Russia s the country of removal. Reed Decl., ¶ 10. A hearing was
16 scheduled for April 2027 where Petitioner’s application for relief from removal would be decided.
17 *See id.*

18 On January 5, 2026, immigration officers arrested Petitioner in Everett, Washington. Reed
19 Decl., ¶ 15; Lambert Decl., Ex. E, Form I-213; Ex. F, Warrant for Arrest; Ex. G, Notice of Custody
20 Determination. Federal Respondents acknowledge that the warrant and the custody determination
21 paperwork cite detention authority as 8 U.S.C. § 1226. However, as an arriving alien in full
22 removal proceedings, Petitioner’s detention authority is 8 U.S.C. § 1225(b)(2)(A) despite this
23

24 ³ Undersigned counsel could not locate parole documents, any evidence of extension of Petitioner’s parole, or parole revocation documentation.

1 documentation. Petitioner's removal proceedings are proceeding at Tacoma Immigration Court
2 with a master calendar hearing scheduled for February 3, 2026.

3 III. ARGUMENT

4 A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous
5 was not required prior to his arrest in January 2026. Pet., ¶¶ 42-45. "Due process is flexible and
6 calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*,
7 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be
8 affected by the official action," (2) "the risk of an erroneous deprivation of such interest through
9 the procedures used, and probable value, if any, of additional or substitute procedural safeguards,"
10 and (3) the Government's interest. *Id.*, at 334-35. As described below, the facts in this situation
11 do not support a blanket requirement of written notice and a hearing prior to Petitioner's detention.

12 As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests
13 implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021
14 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that
15 noncitizens released from immigration detention have a protected liberty interest in remaining out
16 of custody, the weight of that liberty must be considered in the broader picture of the immigration
17 system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. After
18 all, "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme
19 Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to
20 aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th
21 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme
22 Court has explained, "[i]n the exercise of its broad power over naturalization and immigration,
23 Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v.*
24 *Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention

1 during deportation proceedings as a constitutionally valid aspect of the deportation process.”
2 *Demore*, 538 U.S. at 523. Thus, Federal Respondents acknowledge that Petitioner had some
3 liberty interest in his continued freedom from detention while on parole. However, that liberty
4 interest was conditional.

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

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

19 In *Martinez Hernandez v. Andrews*, the district court found that allegations of release
20 violations that “are not obviously pretextual as in *E.A.T.-B*”⁴ provided at least an arguable basis
21 “that providing [the petitioner] with notice and a pre-deprivation hearing would have been
22 impracticable and/or would have motivated his flight.” *Martinez Hernandez*, 2025 WL 2495767,
23

24 ⁴ *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

1 at *11-12. Instead of a pre-deprivation hearing, the district court found that any risk of erroneous
2 deprivation could be reduced through a “prompt, post-deprivation process.” *Id.* (collecting cases).

3 There is no need for an evidentiary hearing to determine Petitioner’s status as an arriving
4 alien – as that would not change from his initial entry. To wit, a pre-deprivation hearing would be
5 futile as his detention is based on his mandatory detention. An analysis of Petitioner’s
6 dangerousness or flight risk is not relevant. Even if those factors were to be deemed relevant,
7 Petitioner should not be released here as his failure to check in with ICE provided a basis to arrest
8 him without notice, and a post-deprivation hearing would lessen the risk of erroneous deprivation
9 here. Delgado Decl., ¶¶ 12, 13.

10 Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
11 test and procedural safeguards “must account for the heightened government interest in the
12 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s
13 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government
14 clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation
15 of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is
16 especially true when it comes to determining whether removable aliens must be released on bond
17 during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government
18 likewise has an interest in protecting immigration proceedings from unnecessary delay, especially
19 considering Congress’s purpose for enacting Section 1225(b) and require parole for release for
20 arriving aliens.

21 Federal Respondents acknowledge that district courts have found that the revocation of an
22 order of release on recognizance pursuant to 8 C.F.R. § 1236.1(c)(8) requires a pre-deprivation
23 hearing to determine if that noncitizen is a flight risk or a danger to the community. *See, e.g.,*
24 *E.A.T.-B. v. Wamsley*, No. 2:25-cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025).

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

7 Accordingly, Petitioner is lawfully detained, and this Court should deny his request for
8 release from immigration custody.

9 **IV. CONCLUSION**

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

11 DATED this 30th day of January, 2026.

12 Respectfully submitted,

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21 *I certify that this memorandum contains 1,811*
22 *words, in compliance with the Local Civil Rules.*