

District Judge Kymberly K. Evanson

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

AZAD RAHMANI,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00362-KKE

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
February 23, 2026.

I. INTRODUCTION

This Court should deny Petitioner Azad Rahmani's Petition for Writ of Habeas Corpus. Dkt. 5 ("Pet."). Petitioner challenges his continued immigration detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional. In part, he asserts that his detention authority is governed by 8 U.S.C. § 1231, is unconstitutionally prolonged under *Zadvydas*, and raises concerns regarding a potential third-country removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001)

The governing statutory framework, however, reflects that Petitioner's removal order is not yet administratively final while his appeal remains pending before the Board of Immigration

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Appeals. Accordingly, his detention is governed by 8 U.S.C. § 1225(b), not § 1231, and the post-
2 removal-period analysis discussed in *Zadvydas* does not apply. *Mathews v. Eldridge*, 424 U.S.
3 319 (1976).

4 In addition, Petitioner challenges his July 2025 re-detention as violative of due process
5 under the framework set forth in *Mathews*. His July 2025 re-detention arose from a unique factual
6 circumstance in which he was encountered by U.S. Customs and Border Protection near the
7 Canadian border following the entry of an *in absentia* removal order. This situation—prompted
8 by an independent law enforcement encounter rather than a discretionary parole revocation—
9 materially distinguishes this case from *E.A.T.-B.* and similar cases addressing pre-deprivation
10 process. *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash. 2025).

11 Finally, Petitioner's third-country claims are speculative. His removal order designates
12 Iran, and the Department of Homeland Security is actively pursuing travel documentation from
13 that country. No third-country removal is contemplated, and those claims are not ripe, particularly
14 where Petitioner's removal order is not yet administratively final.

15 For these reasons, the Petition should be denied.

16 II. FACTUAL BACKGROUND

17 Petitioner is a native and citizen of Iran, born in 1997. Declaration of Karl Douglas ¶ 3.
18 On September 15, 2023, Petitioner entered the United States at or near San Ysidro, California
19 without being admitted or paroled by an Immigration Officer. *Id.* ¶ 4. Petitioner was released on
20 his own recognizance ("OREC") due to lack of bed space. *Id.*

21 On September 26, 2023, a Notice to Appear ("NTA") was sent by regular mail to
22 Petitioner that charged under INA § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i) of the
23 Immigration and Nationality Act, as amended, in that he was an alien present in the United States
24 without being admitted or paroled, or who arrived in the United States at any time or place other

1 than designated by the Attorney General; and, INA § 212(a)(7)(A)(i)(I); 8 U.S.C. §
2 1182(a)(7)(A)(i)(I), as amended, as an immigrant who, at the time of application for admission,
3 is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or
4 other valid entry document required by the Act, and a valid unexpired passport, or other suitable
5 travel document, or document of identity and nationality as required under the regulations issued
6 by the Attorney General under section 211(a) of the Act. *Id.* ¶ 5; Declaration of Alixandria K.
7 Morris (“Morris Decl.”), Exs. 1-2 (NTA; I-213).

8 On December 8, 2023, Petitioner appeared in San Diego Immigration Court. Douglas
9 Decl. ¶ 6. On February 2, 2024, Petitioner appeared in San Diego Immigration Court. *Id.* ¶ 7. On
10 April 16, 2024, Petitioner appeared in San Diego Immigration Court. *Id.* ¶ 8. On May 22, 2024,
11 Petitioner appeared in San Diego Immigration Court, and a San Diego Immigration Judge
12 sustained the charges of removability and designated Iran as the country of removal. *Id.* ¶ 9.

13 On May 31, 2024, Petitioner filed Form I-589, Application for Asylum and Withholding
14 of Removal with the Executive Office for Immigration Review (“EOIR”). *Id.* ¶ 10. On August
15 27, 2024, Petitioner appeared in San Diego Immigration Court. *Id.* ¶ 11. On January 8, 2025,
16 Petitioner appeared in San Diego Immigration Court. *Id.* ¶ 12. On July 15, 2025, Petitioner was
17 ordered removed *in absentia* to Iran by a San Diego Immigration Judge. Petitioner’s counsel
18 appeared, but Petitioner did not. *Id.* ¶ 13.

19 On July 16, 2025, Petitioner was arrested by United States Border Patrol in Blaine,
20 Washington. *Id.* ¶ 14; Morris Decl., Exs. 4-5. Petitioner was contacted by Border Patrol when he
21 was pacing in the parking lot of Peace Arch Park about 100 yards south of the Canadian border.
22 Douglas Decl. ¶ 14. United States Border Patrol confirmed that Petitioner was ordered removed
23 in absentia on July 15, 2025. *Id.* Petitioner provided two United States addresses to Border Patrol:
24 one in Chula Vista, California and one in Oceanside, California. *Id.* On July 17, 2025, Petitioner

1 was booked into NWIPC. *Id.* ¶ 15.

2 On October 17, 2025, San Diego Immigration Court entered an Order that rejected and
3 cancelled Petitioner's motion to reopen because Petitioner failed to pay the filing fee. *Id.* ¶ 16. On
4 July 15, 2025, the Court ordered Petitioner removed *in absentia* because he failed to appear for
5 his Individual Hearing (IH). *Id.* Several months later, on October 9, 2025, Petitioner filed a
6 Motion to Reopen with the Court. *Id.* Within his Motion to Reopen, Petitioner did not allege that
7 he failed to appear for his IH because of a lack of notice. *Id.* Instead, Petitioner alleges that he
8 failed to appear for his IH based upon counsel's advice. *Id.* Given this background, the Petitioner
9 must pay the appropriate filing fee associated with the Motion to Reopen. *Id.* However, Petitioner
10 failed to provide any fee receipt evidencing that he made the payment on the EOIR Payment
11 Portal. *Id.*

12 On October 22, 2025, Petitioner filed a Motion for a Fee Waiver and a Motion to Reopen
13 with San Diego EOIR. *Id.* ¶ 17. On October 23, 2025, a San Diego Immigration Judge entered an
14 Order that rejected and cancelled Petitioner's October 22, 2025, Motion to Reopen because
15 Petitioner failed to pay the filing fee. *Id.* ¶ 18. Also on October 23, 2025, a San Diego Immigration
16 Judge entered an Order that denied Petitioner's Motion for a Fee Waiver for the Motion to
17 Reopen. *Id.* Also on October 23, 2025, Petitioner filed a fee receipt with San Diego EOIR showing
18 the fee was paid for a Motion to Reopen. *Id.* Petitioner filed a Motion to Reopen with EOIR, San
19 Diego the same day. *Id.*

20 On October 29, 2025, DHS filed a Reply to the Motion to Reopen, opposing the motion.
21 *Id.* ¶ 19. On November 10, 2025, a San Diego Immigration Judge entered an Order that denied
22 Petitioner's Motion to Reopen. *Id.* ¶ 20. On December 9, 2025, Petitioner filed an appeal with the
23 Board of Immigration Appeals ("BIA") to the November 10, 2025 Order denying his motion to
24 reopen. *Id.* ¶ 21.

1 On December 18, 2025, the BIA issued a filing receipt for the Petitioner's appeal. *Id.* ¶
2 23. On January 16, 2026, the BIA issued a Briefing Schedule Notice that requires briefs to be
3 submitted no later than February 6, 2026. *Id.* ¶ 26.

4 On December 16, 2025, the Travel Document Request package was submitted to Removal
5 and International Operations ("RIO") for submission to Iran. *Id.* ¶ 22. On December 23, 2025, the
6 Iranian Embassy requested an interview with Petitioner. *Id.* ¶ 24. On December 31, 2025, the
7 Iranian Embassy conducted a phone interview with Petitioner. *Id.* ¶ 25. On February 6, 2026, RIO
8 advised local ERO that the travel document was pending. Douglas Decl. ¶ 27.

9 III. LEGAL STANDARD

10 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
11 jurisdiction. They possess only that power authorized by the Constitution and statute." *Exxon*
12 *Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).
13 "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to
14 the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title
15 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

16 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
17 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
18 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

19 IV. ARGUMENT

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

21 Petitioner errs in citing 8 U.S.C. § 1231 as his detention authority and errs in providing
22 the Court with a due process analysis pursuant to *Zadvydas*. 533 U.S. 678.

23 In *Cui v. Garland*, 13 F.4th 991 (9th Cir. 2021), the Ninth Circuit Court of Appeals
24 addressed the finality of *in absentia* removal orders in the context of a petition for review. *Cui*

1 established that, under the plain language of 8 U.S.C. § 1101(a)(47)(B), an *in absentia* removal
2 order is not finalized until the statutory time for a motion to reopen has run or the BIA has acted
3 on it. The court held that an *in absentia* removal order does not become a “final order of removal”
4 for judicial review purposes until the 180-day period to file a motion to reopen has expired, or, if
5 a motion is filed, until the Board of Immigration Appeals (BIA) denies that motion. *Cui*, 13 F.4th
6 at 996.

7 Here, Petitioner was ordered removed *in absentia* to Iran by a San Diego Immigration
8 Judge on July 15, 2025. Douglas Decl. ¶ 13. The 180-day period to file a motion to reopen would
9 have expired in January 2026. However, Petitioner filed a Motion to Reopen in October 2025.
10 Douglas Decl. ¶¶ 17-18. When his motion was denied, Petitioner filed an appeal with the BIA.
11 *Id.* ¶¶ 19-21. To date, his appeal remains pending. *Id.* ¶ 26. Thus, at no time has Petitioner’s July
12 15, 2025, order become administratively final. *Cui*, 13 F.4th at 996.

13 Accordingly, Petitioner is an applicant for admission who is subject to mandatory
14 detention pursuant to 8 U.S.C. § 1225(b). Douglas Decl. ¶ 5; Morris Decl., Exs. 1-2; *see also*
15 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Applicants for admission fall into one
16 of two categories. Section 1225(b)(1) covers noncitizens initially determined to be inadmissible
17 due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens
18 designated by the Attorney General in his or her discretion. Separately, section 1225(b)(2) serves
19 as a catchall provision that applies to all applicants for admission not covered by Section
20 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281,
21 287 (2018).

22 Congress has determined that all aliens subject to section 1225(b) are subject to mandatory
23 detention, regardless of whether an alien falls under Section 1225(b)(1) or (b)(2). While all
24 noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory detention, they may

1 be subject to parole by the Attorney General or Department of Homeland Security ("DHS"), and
2 that is not an issue that the Immigration Judge has authority to consider. *See* Immigration and
3 Nationality Act ("INA") § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a).

4 In contrast to mandatory detention under 8 U.S.C. § 1225(b), 8 U.S.C. § 1226(a) applies
5 to aliens in removal proceedings who are not subject to mandatory detention and grants the
6 Secretary discretionary authority to detain the alien or release him on bond or conditional parole,
7 subject to a custody redetermination hearing before an immigration judge. 8 C.F.R. §§
8 236.1(d)(1), 1003.19(a). At such hearing, the alien bears the burden to show he is not a flight risk
9 or danger to the community. 8 C.F.R. § 236.1(c)(8); *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A.
10 2006).

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

13 A pre-deprivation hearing to determine whether Petitioner was a flight risk or dangerous
14 was not required prior to Petitioner's arrest in July 2025. Pet., pgs. 23-24. "Due process is flexible
15 and calls for such procedural protections as the particular situation demands." *Mathews v.*
16 *Eldridge*, 424 U.S. 319, 334 (1976). Mathews calls for an analysis of (1) "the private interest that
17 will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest
18 through the procedures used, and probable value, if any, of additional or substitute procedural
19 safeguards," and (3) the Government's interest. *Id.*, at 334-35. As described below, the facts in
20 this situation do not support a blanket requirement of written notice and a hearing prior to
21 Petitioner's detention.

22 Due process does not mandate a pre-detention hearing here. As to the first *Mathews* factor,
23 Federal Respondents recognize the "weighty liberty interests implicated by the Government's
24 detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.

1 Aug. 20, 2021). But while many courts, including this Court, have recognized that noncitizens
2 released from immigration detention have a protected liberty interest in remaining out of custody,
3 the weight of that liberty must be considered in the broader picture of the immigration system,
4 which has long acknowledged that an alien has a lesser liberty interest than a citizen. *Rodriguez*
5 *Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522
6 (2003)).

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

15 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
16 erroneous deprivation of Petitioner’s liberty did not necessitate a pre-deprivation hearing. The
17 Supreme Court has held that “the Constitution requires some kind of hearing before the State
18 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis
19 in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing
20 is not appropriate in every situation. *Id.*, at 128 (noting there may be “special case[s]” where a
21 pre-deprivation hearing is impracticable). Petitioner’s re-detention qualifies as a special case. In
22 stark contrast to the facts in *E.A.T.-B*, Petitioner’s arrest was not made by ICE or initiated by ICE.
23 Instead, Petitioner came to the attention of the United States Customs and Border Protection
24 (“CBP”) when he was pacing in the parking lot of Peace Arch Park about 100 yards south of the

1 Canadian border. Douglas Decl. ¶ 14. The facts here present a unique circumstance leading to
2 Petitioner's arrest.

3 In *Martinez Hernandez v. Andrews*, the district court found that allegations of ATD
4 violations that "are not obviously pretextual as in *E.A.T.-B* "provided at least an arguable basis
5 "that providing [the petitioner] with notice and a pre-deprivation hearing would have been
6 impracticable and/or would have motivated his flight." *Martinez Hernandez*, No. 1:25-CV-01035
7 JLT HBK, 2025 WL 2495767, at *11-12 (E.D. Cal. Aug. 28, 2025). Instead of a pre-deprivation
8 hearing, the district court found that any risk of erroneous deprivation could be reduced through
9 a "prompt, post-deprivation process." *Id.* (collecting cases).

10 There is no need for an evidentiary hearing to determine Petitioner's status as an alien
11 subject to mandatory detention – as that would not change from his initial entry. To wit, a pre-
12 deprivation hearing would be futile as his detention is mandatory. Instead, if this Court were to
13 grant relief, it should order Petitioner be provided with a post-deprivation hearing.

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

23 Federal Respondents acknowledge that district courts, including this Court, have found
24 that the revocation of parole (or an OREC) requires a pre-deprivation hearing to determine if that

1 noncitizen is a flight risk or a danger to the community. *See, e.g., E.A.T.-B. v. Wamsley*, No. 2:25-
2 cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --
3 - F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept.
4 12, 2025). However, the circumstances of this case demonstrate a departure from the facts present
5 in those cases.

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

8 **C. Petitioner's Third Country Claims are Without Merit and Not Ripe for Review**

9 Petitioner presents no evidence of any intention by ICE to remove Petitioner to a third
10 country. *See generally* Dkt. 5. Indeed, nothing in the Petition asserts ICE has provided notice of
11 any intention to remove him to a third country, and his removal order has not yet even become
12 administratively final as described above. *Id.* Petitioner purports to bring claims challenging the
13 constitutionality of his possible removal to a third country as a likely violation of the Fifth
14 Amendment, the Eighth Amendment, the Convention Against Torture, the APA, and the INA. *Id.*
15 pgs. 25-28 (Grounds for Relief Four and Five). Such claims are based on the hypothetical scenario
16 where his appeal is denied and ICE seeks his removal to a third country other than Iran, which
17 are entirely speculative and not ripe for review. Petitioner's order from the immigration court
18 (which is not administratively final) orders removal to Iran. Morris Decl., Ex. 3. ICE is currently
19 working to obtain a travel document from Iran. *See supra* § II.B.3; Douglas Decl. ¶ 27; Morris
20 Decl., Ex. 4. Based on these facts, there is no case or controversy because there is no concrete
21 indication that removal to any third country will occur, let alone removal at all.

22 In any event, at least one court in this district has found that such claims are not the proper
23 subject of an immigration habeas petition, considering that Petitioner presents no evidence that
24 Federal Respondents seek to remove him to a third country. *Tran v. Bondi*, No. C25-01897-JLR,

1 2025 WL 3140462, at *4 (W.D. Wash. Nov. 10, 2025) (citing *Thomas v. Anchorage Equal Rights*
2 *Com'n*, 220 F.3d 1134, 1138 (9th Cir. 2000)).

3 Accordingly, Petitioner's claims are speculative and not part of a live controversy because
4 there is no concrete indication that removal to a third country will occur. Thus, these claims should
5 be dismissed as premature.

6 **D. Even if the Court grants the habeas petition, it should deny Petitioner's remaining**
7 **requests for relief**

8 Subsections (d)–(h) in Petitioner's Prayer for Relief exceed the narrow scope of habeas
9 review under 28 U.S.C. § 2241, the Court's subject matter jurisdiction, and conflict with the
10 detention and removal scheme set forth in 8 U.S.C. § 1231.

11 To the extent Petitioner seeks to place conditions on ICE relating to his removal, Section
12 1252(g) strips jurisdiction over claims arising from the decision or action to commence
13 proceedings, adjudicate cases, or execute removal orders. The law is clear: under 8 U.S.C. §
14 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien
15 arising from the decision or action by the Attorney General to commence proceedings, adjudicate
16 cases, or execute removal orders against any alien." Section 1252(g) limits jurisdiction to enjoin
17 Petitioner's immigration and removal proceedings. To do so would directly violate the
18 jurisdiction-stripping provision at 8 U.S.C. § 1252(g).

19 Nor can Petitioner satisfy the traditional requirements for injunctive relief. The requested
20 orders would impose extra-statutory conditions on detention and removal, interfere with
21 enforcement discretion delegated by Congress, and intrude upon matters committed to the
22 Executive Branch. The Court should therefore deny the relief requested in subsections (e)–(g).

23 Moreover, Petitioner's request for a hearing which places the burden on the government
24 by clear and convincing evidence is contrary to law. Pet., Prayer for Relief ¶ (d). The Supreme

1 Court has rejected reading such requirements into immigration detention statutes. *See Jennings v.*
2 *Rodriguez*, 583 U.S. 281, 303-04 (2018); *see also, Johnson v. Arteaga-Martinez*, 596 U.S. 149,
3 157-58 (2022). No Supreme Court decision requires the Government to justify immigration
4 detention by clear and convincing evidence in this context. Thus, even if this Court were to order
5 Petitioner's release, this Court should not grant his request for "a hearing prior to re-detention
6 where Respondents must prove by clear and convincing evidence that Petitioner is a flight risk
7 or danger to the community and that no alternatives to detention would mitigate those risks." Pet.,
8 Prayer for Relief ¶ 4 (emphasis added).

9 The government has *never* borne the burden to justify detention by clear and convincing
10 evidence. *See, e.g., Demore v. Kim*, 538 U.S. 510, 522, 532 (2003); *Rodriguez Diaz v. Garland*,
11 53 F.4th 1189, 1211 (9th Cir. 2022) ("We are aware of no Supreme Court case placing the burden
12 on the government to justify the continued detention of [a noncitizen], much less through an
13 elevated 'clear and convincing' showing.").

14 Indeed, even when considering a noncitizen subjected to potentially indefinite detention
15 after the conclusion of removal proceedings, the Supreme Court has placed the burden on the
16 noncitizen, as opposed to the Government, to justify release. *See Zadvydas*, 533 U.S. at 701.
17 Thus, even if this Court were to conclude that some form of hearing is required, it should not
18 impose a clear-and-convincing-evidence standard unsupported by statute or controlling
19 precedent. At most, the Government should be required to demonstrate dangerousness or flight
20 risk by a preponderance of the evidence in line with the immigration officer's initial
21 determination. 8 C.F.R. § 1236.1(c)(8).

22 Accordingly, even if this Court were to grant habeas relief, the Court should deny the
23 additional relief requested in Petitioner's Prayer for Relief subsections (d)-(g).

24 //

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition. Even if this Court were to grant habeas relief, the Court should deny the additional relief requested in Prayer for Relief subsections (d)-(g).

Dated this 18th day of February, 2026.

Respectfully submitted,

s/ Alixandria K. Morris

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I certify that this memorandum contains 3,730 words, in compliance with the Local Civil Rules.