**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

EVANDRO MARCHESINI LAGOS,

Petitioner,

v. Case No: 6:25-cv-673-JSS-UAM

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and ANY AGENTS INVOLVED IN THE EXECUTION OF SUMMARY REMOVAL ORDERS WITHOUT PROPER LEGAL PROCESS,

Respondents.

**FEDERAL RESPONDENTS' RESPONSE TO HABEAS CORPUS PETITION**

Federal Respondents hereby respond to the Pro Se Habeas Corpus Petition ("Petition") (Doc. 1) filed on April 17, 2025, by Petitioner Evandro Marchesini Lagos. As shown below, this Court must dismiss the Petition for lack of subject matter jurisdiction as Petitioner is not in "custody" for purposes of this habeas challenge.

## I. FACTUAL BACKGROUND

Petitioner is a 60-year-old male, who is a national of Brazil, citizen of Italy, and a permanent resident of the United Kingdom. Doc. 1, pgs. 1-2. He last entered the United States on December 31, 2024, as an arriving alien and paroled. *Id.* at 28. On January 2, 2025, Petitioner was served an I-862, a Notice to Appear, and placed in removal proceedings. *Id.* The Notice to Appear stated that Petitioner was not a citizen or national of the United States; he is a native of Brazil and a citizen of Italy; he applied for admission on December 31, 2024 at the Orlando International Airport; and that he is "an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act; to wit due to the fact, you claimed fear of going back to the United Kingdom. Due to this, you appear to be an intending immigrant not in possession of an immigrant visa and or a valid entry document." *Id.* Petitioner is ordered to appear before an immigration judge of the United States Department of Justice in Orlando, Florida on May 27, 2025, at 8:30 a.m. to show why he should not be removed from the United States. *Id.*

On April 11, 2025, Petitioner received an email with the subject "Notice of Termination of Parole." Doc 1, pg. 33. The email stated, "Pursuant

to 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e), DHS is now exercising its discretion to terminate your parole." *Id.* On April 17, 2025, Petitioner filed this Petition, motion for stay, and motion for temporary restraining order. Doc. 1. On April 23, 2025, Petitioner received a Notice of In-Person Hearing for July 24, 2025, at the Orlando Immigration Court. *See* attached Exhibit 1. On April 24, 2025, the Court denied Petitioner's motion for stay and temporary restraining order, and ordered Respondents to file a response to the Petition. Doc. 5.

## II. ARGUMENT

### a. The Court lacks habeas jurisdiction because Petitioner is not "in custody" for purposes of his habeas challenge.

The Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241, functions to grant relief from the unlawful custody or imprisonment of an individual. Federal courts have jurisdiction to entertain habeas corpus petitions "only from persons who are `in custody in violation of the Constitution or laws or treaties of the United States.'" *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (quoting 28 U.S.C. § 2241(c)(3)). "Although the word `custody' is elastic, all definitions of it incorporate some concept of ongoing control, restraint, or responsibility by the custodian." *Howard v. Warden*, 776 F.3d 772, 775-76 (11th Cir. 2015) (quoting *Samirah v. O'Connell*, 335 F.3d 545, 549 (7th Cir. 2003)). Petitioner acknowledges that he is "currently residing in a shelter in Orlando,

Florida" and listed his current residence as "[l]iving temporarily in a shelter in Orlando, Florida." Doc 1, pg. 1. At no point does Petitioner allege that he is in custody.

The Court lacks habeas jurisdiction because Petitioner is not "in custody" for purposes of his habeas challenge. The email terminating Petitioner's parole does not constitute "custody" of Petitioner as it places no restrictions on Petitioner. In *Romero v. Sec., U.S. Dept. of Homeland Sec.*, 20 F.4th 1374, 1379 (11th Cir. 2021), the conditions of the petitioner's parole termination were held to be restrictive because she was required appear in person at the government's request, she could not travel outside Florida for more than 48 hours without advance notice, she had to apprise the government of any change in residence or employment, and she had to participate in a more stringent supervision program "if directed to do so." If the petitioner violated any of these conditions, she may be detained. Moreover, she was subject to a "Plan of Action" requiring her to depart the country or be forcibly removed. This case is distinct from *Romero* since the email has not placed any restrictions on Petitioner.

For this Court to have jurisdiction to consider arguments in habeas corpus, Petitioner must have exhausted his administrative remedies as to those arguments. See, e.g., *Daniels v. United States*, 532 U.S. 374 (2001); *Boz v. United*

*States*, 248 F.3d 1299 (11th Cir. 2001) (discussing the exhaustion requirement in habeas review of immigration decisions). The exhaustion requirement applicable to immigration cases is found in INA § 242(d)(1), 8 U.S.C. § 1252(d)(1), which provides that courts may review a final order of removal only if "the alien has exhausted all administrative remedies available to the alien as of right." *Sundar v. INS*, 328 F.3d 1320 (11th Cir. 2003). The Court of Appeals explained that, even though other cases involved aliens who had appealed their removal orders directly to the court of appeals, "the exhaustion requirement applies in habeas proceedings, too." *Id.* In this case, Petitioner has failed to exhaust the one administrative remedy available to him: his current removal proceedings. On January 2, 2025, Petitioner was served with a Notice to Appear placing him in immigration removal proceedings. Doc. 1, pg. 28. As such, Petitioner is not subject to a final administrative order of removal and has not exhausted his administrative remedies.

**b. The Court lacks subject matter jurisdiction to review Petitioner's parole revocation.**

"The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). As determined by the Supreme Court, the statute

precludes a noncitizen from "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

Similarly, 8 U.S.C. § 1252(a)(2)(B)(ii) bars judicial review of discretionary decisions under § 1226(a):

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

§ 1252(a)(2)(B)(ii). The email terminating Petitioner's parole is not a "deportation" order as Petitioner alleges. In *Alonso-Escobar v. USCIS Field Off. Dir. Miami, Fla.*, the petitioner challenged the defendant's discretionary decision not to parole him into the United States, the district court properly dismissed his complaint for lack of subject matter jurisdiction. *Alonso-Escobar v. USCIS Field Off. Dir. Miami, Fla.*, 462 F. App'x 933, 935 (11th Cir. 2012). See also *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at *7 (S.D. Fla. Sept. 26, 2024) ("Respondent is correct that a decision to parole is discretionary, and therefore this Court does not have jurisdiction to review.")

Dated: May 23, 2025

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

*/s/ Joy Warner*
Assistant United States Attorney
USA No. 229
400 W. Washington Street, Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7581
Facsimile: (407) 648-7588
Email: joy.warner@usdoj.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 23, 2025, I electronically filed the foregoing with the Court using the Court's CM/ECF filing system. I further certify that on the same day I caused a copy of the foregoing document and notice of electronic filing to be furnished by U.S. mail to the following non-CM/ECF participant:

Evandro Marchesini,
PRO SE
8015 International Drive Suite 216
Orlando, FL 32819

*/s/ Joy Warner*
Assistant United States Attorney