IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RAFAEL LOPEZ-ARVELAIZ,

Petitioner,

v.

No. 1:25-cv-00452-MIS-GBW

KRISTI NOEM, Secretary of the Department of Homeland Security; PAMELA BONDI, Attorney General of the U.S.; TODD M. LYONS, Acting Director U.S. Immigration and Customs Enforcement; and MARY DE ANDA-YBARRA, ICE Field Office Director for the El Paso Field Office,

Respondents.

ANSWER TO THE PETITION FOR
WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

In accordance with this Court's "Order to Answer" (Doc. 3), the United States hereby answers Petitioner Rafael Lopez-Arvelaiz's "Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241." Doc. 1. The United States respectfully requests that the Court deny Petitioner's request for a writ of habeas corpus. Petitioner lost his parole when he violated the conditions of parole by breaking state law. Petitioner is not entitled to a bond hearing as an arriving, inadmissible alien seeking asylum. And Petitioner is receiving the process he is due under law.

I. BACKGROUND

Upon information and belief, the United States believes the following facts to be true. Petitioner was paroled into the United States on March 23, 2024, pursuant to a two-year humanitarian parole program for nationals of Cuba, Haiti, Nicaragua, and Venezuela ("CHNV").[1] Petitioner was initially provided a parole expiration date of March 22, 2025. U.S. Customs and Border Protection provided notice to parolees, including Petitioner, that their parole

[1] Under CHNV, nationals of Venezuela who met certain eligibility requirements were able to seek parole for a two-year term. *See* 87 Fed. Reg. 63507 (Oct. 19, 2022); 88 Fed. Reg. 1243, 1255, 1266 (Jan. 9, 2023).

was conditioned upon compliance with certain conditions. *See* Parole Information for Certain Nationals of Cuba, Haiti, Nicaragua, Ukraine, and Venezuela, Exh. A. Those conditions expressly required that Petitioner "comply with local, State and Federal laws and ordinances." *Id.* at 1. Those conditions also cautioned that "[f]ailure to comply with these conditions can lead to termination of your parole, detention, and removal from the United States . . . ." *Id.*

Petitioner began living with his sister in Orlando, FL, where he engaged in permissible work pursuant to a work authorization. Petitioner does not appear to have filed any petitions with U.S. Citizenship and Immigration Services (USCIS) to seek legal status in the United States until after his parole was revoked and he was placed into Immigration and Customs Enforcement (ICE) custody.

On March 6, 2025, a police officer with the St. Cloud Police Department (SCPD) conducted a traffic stop on Petitioner after observing Petitioner fail to stop at a stop sign. The officer noted that Petitioner was driving a car with a temporary license plate from California. The officer conducted a search in the FCIC/NCIC database for the California license plate, which did not return any records. The officer then conducted a search for Petitioner's vehicle's VIN, which showed the vehicle registered to another person in the State of Florida. Petitioner claimed to have purchased the vehicle in April of 2024. Petitioner also showed the officer that he had purchased multiple temporary tags dating back to 11/13/2024. After concluding the investigation, the officer arrested Petitioner, citing him for (1) failing to provide proof of insurance, (2) failing to stop at a stop sign, and (3) displaying a license tag not assigned to the vehicle. *See Florida v. Lopez Arvelaiz*, 2025-CT-001029 (filed Mar. 6, 2025). Petitioner was released by Florida authorities into ICE custody on March 6, 2025.

On March 8, 2025, Petitioner was served with a Notice to Appear ("NTA"), initiating removal proceedings. On March 13, 2025, Petitioner filed a motion for bond re-determination

before the Miami Krome Immigration Court. A hearing was scheduled for March 25, 2025. Prior to the hearing, however, Petitioner was transferred to the Torrance County Detention Center in Estancia, New Mexico. Based on information received from ICE, the United States understands Petitioner was moved due to logistical needs. In short, immigration detention bedspace was lacking in Miami and available in Estancia; recent arrivals were prioritized for transfer so as to avoid disrupting cases further into proceedings.

On March 28, 2025, Petitioner filed a "First Notice of Filing of Form I-589, Application for Asylum and Withholding of Removal." Petitioner also filed a motion for bond re-determination before the Otero Immigration Court in New Mexico. A hearing was held on April 2, 2025, and the Immigration Court denied Petitioner's request to be released on bond.

On May 2, 2025, ICE filed "Additional Charges of Inadmissibility/Deportability," claiming that Petitioner is "an arriving alien" who: "arrived at the Miami International Airport in Miami, Florida on or about March 23, 2024," "[was] paroled into the United States as a humanitarian parolee on March 23, 2024," and "[is] an immigrant not in possession of a valid unexpired visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act."

On May 13, 2025, Petitioner filed the instant petition. On May 15, 2025, this Court ordered Respondents to answer the petition "within seven days of service of this Order," which is on or before May 22, 2025.

II. APPLICABLE LAW

Habeas corpus is "an extraordinary remedy which will not ordinarily lie where there is an adequate remedy at law. *Bland v. Rodgers*, 332 F. Supp. 989, 991 (D.D.C. 1971); *see also*, *U.S. ex rel. Caputo v. Sharp*, 282 F. Supp. 362, 363 (E.D. Pa. 1968) ("Habeas corpus is an extraordinary remedy, and is generally reserved for those situations where other relief is not

practically available.").

The Executive Branch has broad constitutional and statutory power over the administration and enforcement of the nation's immigration laws. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see, e.g.*, 6 U.S.C. § 202(4); 8 U.S.C. § 1103(a)(1), (3). The INA authorizes the Secretary of Homeland Security, "in [her] discretion," to "parole into the United States" applicants for admission "temporarily under such conditions as [the Secretary] may prescribe" "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). The "parole of such alien shall not be regarded as an admission . . . and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled" and "his case shall continue to be dealt with in the same manner as that of any other applicant for admission[.]" *Id.* "Congress has delegated remarkably broad discretion to executive officials under the INA, and these grants of statutory authority are particularly sweeping in the context of parole[.]" *Amanullah v. Nelson*, 811 F.2d 1, 6 (1st Cir. 1987).

On January 20, 2025, the President signed executive orders calling for DHS to "re-establish a uniform baseline for screening and vetting standards and procedures . . . for any alien seeking a visa or immigration benefit," Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats, 90 Fed. Reg. 8451 (Jan. 20, 2025); to ensure that § 1182(d)(5)(A) parole "is exercised only on a case-by-case basis in accordance with the plain language of the statute," Protecting the American People Against Invasion, 90 Fed. Reg. 8443 (Jan. 20, 2025); and "consistent with applicable law, take all appropriate action to: … [t]erminate all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders, including the program known as" CHNV, Securing Our

Borders, 90 Fed. Reg. 8467 (Jan. 20, 2025). The EOs themselves did not terminate CHNV or take any other action concerning parole, but rather exhorted DHS to examine and modify its processes as appropriate to fit these principles.

Accordingly, on that same day, Acting Homeland Security Secretary Benjamin Huffman issued a memorandum directing DHS to review over a 60-day period its existing parole policies to determine which are in strict compliance with § 1182(d)(5)(A). It instructed DHS and its subagencies, following that review, to "pause, modify or terminate" any parole policy that does not comply if: it "was not promulgated pursuant to the procedural requirements of the [APA] or any comparable scheme," no "legitimate reliance interests" are protected, and "[d]oing so is otherwise consistent with applicable statutes, regulations, and court orders." Huffman Memo, Exh. B at 2.

On January 23, 2025, the Acting Director of U.S. Citizenship and Immigration Services (USCIS), Jennifer Higgins, sent an email requesting that USCIS officers "do not make any final decisions (approval, denial, closure) or issue a travel document or I-94 for any initial parole or re-parole application" for enumerated parole programs until further instructions are issued. Higgins Email, Exh. C at 1. In a February 14, 2025 memorandum, USCIS Acting Deputy Director Andrew Davidson explained that a preliminary internal investigation had uncovered hundreds of potential instances of fraud in the CHNV program and had exposed "serious vulnerabilities" in DHS's vetting process. Davidson Memo, Exh. D at 2. Accordingly, Davidson directed USCIS to "place an administrative hold on all immigration benefit requests filed by aliens who are or were paroled under U4U, CHNV, or FRP processes, pending the completion of the required screening and vetting . . . to identify any fraud, public safety, or national security concerns." *Id.*

On March 25, 2025, the Department of Homeland Security ("DHS") published a Federal

Register Notice ("FRN") announcing that, effective immediately, DHS "is terminating the categorical parole programs for inadmissible aliens from Cuba, Haiti, Nicaragua, and Venezuela." See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025). The FRN further stated that "[t]he temporary parole period of aliens in the United States under the CHNV parole programs and whose parole has not already expired by April 24, 2025[,] will terminate on that date unless the Secretary makes an individual determination to the contrary." *Id.*

On April 14, 2025, the U.S. District Court of Massachusetts stayed the FRN with respect to valid grants of CHNV parole. *See Svitlana Doe v. Kristi Noem, et al.*, No. 25-cv-10495-IT, Doc. 97 (D. Ma. filed April 14, 2025). The decision is pending appellate review in the First Circuit Court of Appeals. *Doe v. Noem*, No. 25-1384 (1st Cir). On May 5, however, the First Circuit Court of Appeals denied the United States' request to stay the order of the District Court. *Id.* The United States filed an application with the U.S. Supreme Court to stay the order issued by the U.S. District Court for the District of Massachusetts, which remains pending. *Noem v. Doe*, No. 24A (U.S. Sup. Ct.).

III. ARGUMENT

A. Petitioner's Parole Was Properly Revoked After His Arrest for Violating State Law

Petitioner claims his parole remains valid because he is part of the group protected by the stay entered in *Doe v. Noem*, No. 25-cv-10495 by the U.S. District Court for the District of Massachusetts. Petitioner is mistaken. In *Doe v. Noem*, the Court considered the *general* revocation of parole for all immigrants granted CHNV parole pursuant to the FRN, which was published on March 25, 2025. Critically, Petitioner's parole status had been revoked by service of the NTA on March 8, 2025. Thus, on March 25, 2025, Petitioner was no longer part of the group of valid parolees affected by the publication of the FRN. Accordingly, Petitioner is not

protected by the Court's stay in *Doe v. Noem*.

An NTA constitutes written notice of cancelation of parole. 8 C.F.R. § 212.5(e)(2)(i). The pertinent portion of 8 C.F.R. § 212.5(e) provides as follows:

> (e) Termination of parole —
>
> (1) Automatic. Parole shall be automatically terminated without written notice
>
> (i) upon the departure from the United States of the alien, or,
>
> (ii) if not departed, at the expiration of the time for which parole was authorized, and in the latter case the alien shall be processed in accordance with paragraph (e)(2) of this section except that no written notice shall be required.
>
> (2)
>
> (i) On notice. In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, ***parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.*** Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody.
>
> . . .

(Emphasis added).

B. Petitioner is Not Entitled to a Bond Hearing Pending Removal Proceedings

The Due Process Clause does not afford Petitioner any right to a bond hearing. As the Supreme Court in *DHS v. Thuraissigiam*, 591 U.S. 103, 138-39 explicitly held, noncitizens without substantial connection to this country apprehended shortly after their illegal entry have

only those due process rights provided by statute. 140 S. Ct. at 1983. Thus, for Petitioner to prevail, he would have to locate those alleged rights in the governing statute, 8 U.S.C. § 1225(b)(1). But section 1225(b)(1)(B)(ii) requires that a noncitizen "shall be detained"—and notably makes no mention of any right to a bond hearing at all. *See United States v. Barajas-Alvarado*, 655 F.3d 1077, 1085 (9th Cir. 2011) ("Congress could have created an expedited removal scheme based entirely on the [Secretary's] discretion, . . . [but] it created" "limited procedural rights for arriving aliens" subject to expedited removal.). That being so, Petitioner cannot assert any liberty interest in his release into the United States beyond those already provided by statute and regulation, and absent any liberty interest, have no basis to insist that this Court drastically alter § 1225(b)(1)(B)(ii) by imposing rights or processes found nowhere in statute or regulation. *DHS v. Thuraissigiam*, 591 U.S. 103, 138-39; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application."). Petitioner claims that due process affords him the right to a bond hearing. This requirement is plainly inconsistent with the statute and therefore exceeds the constitutional rights available to noncitizens subject to the expedited removal process. *See Jennings*, 138 S. Ct. at 845; *Thuraissigiam*, 591 U.S. at 138-39. Even in contexts where the prospect of indefinite detention loomed much larger than in this case—where removal proceedings have a definite end point—the Supreme Court has not gone farther than to hold that constitutional concerns are implicated only after six months of detention. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), which dealt with detention under 8 U.S.C. § 1231, the Supreme Court articulated a six-month period of presumptively reasonable detention for noncitizens who had developed extensive ties to the United States—with the qualification that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701. "To the contrary," it held, "an alien may be held in confinement until it has been determined that

there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *see Demore v. Kim*, 538 U.S. 510, 513 (2003) (finding that a "brief" six-month detention of a noncitizen—who had extensive ties to the United States—during the pendency of removal proceedings did not violate due process). There, the Supreme Court recognized that noncitizens "challenging their detention following final orders of deportation were ones for whom removal was no longer practically attainable"—that is, "the detention there did not serve its purported immigration purpose." *Demore*, 538 U.S. at 527. Put differently, the detention had "no definite termination point." *Id.* at 528.

The situation is altogether different here. Detention under § 1225(b)(1)(B)(ii) does have a definite end point, since removal proceedings invariably conclude—whether with a removal order or grant of some relief or protection—and the termination of detention once that critical immigration purpose has been served. For this reason, the Supreme Court took care to circumscribe its opinion in *Zadvydas* to § 1231 detention, acknowledging that noncitizens "who have not yet gained initial admission to this country"—such as Petitioner—present a very different question" from § 1231 detainees. *Zadvydas*, 533 U.S. at 682.

The Supreme Court has long recognized that immigration detention is defined by a particular set of executive powers, legitimate interests, and mitigating factors (including that noncitizens can always terminate detention by returning to their country of nationality) that render it unique. *See, e.g.*, *Mathews v. Diaz*, 426 U.S. 67, 80 (1976) ("Congress regularly makes rules that would be unacceptable if applied to citizens."); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) ("any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government."). As *Thuraissigiam* explained regarding the limited due process rights of a noncitizen apprehended after illegal entry, "the power to admit or

exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." 591 U.S. at 139 (internal quotation marks and citations omitted) (emphasis added). At most, as a noncitizen "seeking initial admission to the United States," Petitioner can seek only "a privilege," as he has "no constitutional rights regarding [his] application." *See Landon*, 459 U.S. at 32. And while Petitioner may be dissatisfied with § 1225(b)(1)(B)(ii)—including the absence of any bond hearings—it is well-settled that "an alien on the threshold of initial entry stands on a different footing," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and "[w]hatever the procedure authorized by Congress is, it is due process as far as" the noncitizen seeking entry is concerned. *U.S. ex rel. Knauff*, 338 U.S. at 544.

The proper test for evaluating Petitioner's claims comes from the Supreme Court's substantive due process analysis of executive immigration detention authority, and is limited to a deferential review of whether the statute continues to "serve its purported immigration purpose." *Demore*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 690); *see Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 540 (1952); *Wong Wing v. United States*, 163 U.S. 228, 235-36 (1896); *see also Demore*, 538 U.S. at 532 (Kennedy, J., concurring). Consistent with this established framework, the Supreme Court, and the Ninth Circuit, have repeatedly upheld the government's authority to detain noncitizens with far more substantial ties to the United States for significantly long periods. *See Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1449-50 (9th Cir.1995); *Zadvydas*, 533 U.S. at 701; *Demore*, 538 U.S. at 531; *Rodriguez v. Robbins II*, 804 F.3d 1060, 1069-70 (9th Cir. 2015). In each case, the government's interests—whether in the detention of criminal noncitizens, during removal preparations, or associated with the executive's plenary power in regulating entry—were sufficient to justify detention.

Even if this was not the proper test, Petitioner's claims nonetheless fail under *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The Supreme Court in *Jennings* reaffirmed that due process is "flexible," only "call[ing] for such procedural protections as the particular situation demands." 138 S. Ct. at 852. The Supreme Court, moreover, has "repeatedly stressed" that due process requires an individualized assessment of multiple factors, including "the private interest that will be affected by the official action"; "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and "the Government's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 334. Congress passed § 1225(b)(l)(B)(ii) in part as a response to findings that "thousands" of noncitizens arrive in the United States each year, seek "asylum immediately upon arrival," and when "released into the general population" "do not return for their hearings." H.R. Rep. No. 104-469, 117-18 (1995). Congress also determined that such incentives were mitigated "in districts . . . where detention capacity has increased and most [] aliens can be detained." *Id.*

Against the clear backdrop establishing the Supreme Court's narrow conception of due process for noncitizens seeking entry into the United States, then Attorney General William Barr issued *Matter of M-S-*. Specifically, he found that 8 U.S.C. § 1225 "cannot be read to contain an implicit exception for bond" and that "[t]here is no way to apply [its] provisions except as they were written—unless paroled, an alien must be detained until his asylum claim is adjudicated." 27 I. & N. Dec. at 510, 517 (emphasis added). In other words, because *Matter of M-S-* does nothing more than interpret a statutory provision, Petitioner's claim of a constitutional right to a bond hearing is reduced to one asserting that § 1225(b)(1)(B)(ii)—the provision that *Matter of M-S-* applies—is unconstitutional, insofar as it fails to provide them with what they believe is

guaranteed by due process. *Id.* at 515. Of course, the burden on Petitioner to make out such a claim is substantial. Courts "do not impute to Congress an intent to pass legislation that is inconsistent with the Constitution," *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 73 (1994), and "acts of Congress enjoy a strong presumption of constitutionality," *Schwenk v. Hartford*, 204 F.3d 1187, 1204 (9th Cir. 2000). *See Perez v. Marshall*, 946 F. Supp. 1521, 1531 (S.D. Cal. 1996) ("A party challenging the constitutionality of a statute bears a heavy burden of proof."). Here, where due process is defined by and limited to what the statute provides, Petitioner cannot meet his heavy burden to show that § 1225(b)(1)(B)(ii) is unconstitutional. *See Thuraissigiam*, 591 U.S. at 140.

C. Petitioner Has Been Provided All the Process He Is Due Under the Law

Even though Petitioner is not entitled to a bond hearing—a fact he acknowledges (Doc. 1 at 7), he was provided one on April 2, 2025. Petitioner does not explain the details of the hearing or provide the basis the Immigration Judge denied his request. Moreover, Petitioner does not explain why he did not seek administrative review of the decision through the Board of Immigration Appeals. Instead, Petitioner boldly claims he was deprived of due process and should be released immediately.

As explained above, the law does not require a hearing to revoke Petitioner's parole. Petitioner's parole was a privilege he enjoyed until he violated the conditions of the parole and was returned to the place where he was prior to parole—an inadmissible, arriving alien seeking asylum. His return to that status means he is entitled to have his claim adjudicated but not entitled to enter the country. He has a hearing scheduled for September 10, 2025, three and a half months from now. If Petitioner does not want to wait in immigration custody for his hearing, he can seek to withdraw his application and accept removal to Venezuela or any third-party country that will accept him.

IV. CONCLUSION

For all the foregoing reasons, the United States respectfully requests the Court deny this "Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 22, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Kristopher N. Houghton 5/22/25
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