

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Rafael Lopez-Arvelaiz,

Petitioner,

v.

Case 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,

/

**PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF
HABEAS CORPUS**

In accordance with this Court's "ORDER EXPEDITING REPLY" (Doc. 7) Petitioner Rafael Lopez-Arvelaiz respectfully submits this reply to Respondents' Answer to his Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

I. PETITIONER'S PAROLE WAS NOT PROPERLY TERMINATED UNDER DHS
REGULATIONS

Respondents assert Petitioner's parole was terminated upon issuance of a Notice to Appear (NTA) on March 8, 2025. This interpretation misapplies DHS regulations. Under 8 C.F.R. § 212.5(e)(2)(i), parole termination requires an individualized discretionary determination by authorized DHS officials that neither humanitarian reasons nor public benefit justify continued parole. Petitioner has received no such individual determination, and Respondents have provided no evidence of such an individualized determination. Instead, they rely solely on minor, unadjudicated

regulatory allegations (e.g., traffic violations, improper tags). Mere allegations of minor regulatory crimes cannot constitutionally justify detention without due process.

Additionally, Petitioner's detention is predicated solely upon unproven minor regulatory allegations, absent adjudication. Pursuant to *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), due process requires consideration of Petitioner's significant liberty interests, risk of erroneous deprivation, and the minimal governmental interest in prolonged detention based on unadjudicated, minor infractions. DHS's summary parole revocation and subsequent detention, absent individualized evidence or adequate notice, fails basic due process standards.

II. PETITIONER IS ENTITLED TO ENHANCED DUE PROCESS PROTECTIONS

Respondents correctly note that, under immigration law, parolees are classified as "arriving aliens." However, Petitioner's case is entirely distinguishable from *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), because Petitioner did not enter the United States illegally or without inspection. Instead, Petitioner was closely vetted by the Respondents and required to present a qualifying sponsor prior to issuing him a travel authorization while he was still in Venezuela. When he presented the travel authorization issued by Respondents at the Miami port of entry, he was paroled into the United States over a year ago. Exhibit A-A, p. 2; *see also* 87 Fed. Reg. 63507 (Oct. 19, 2022). As such, the situation involves significant distinguishing factors not typically associated with an individual at the border or "on the threshold of initial entry."

Since Petitioner was paroled into the United States nearly a year ago, he has lived openly, maintained employment authorization, and established substantial community ties. These factors significantly enhance his entitlement to constitutional due process protections, going beyond the minimal standards applicable to aliens apprehended immediately upon arrival. *See Landon v.*

Plasencia, 459 U.S. 21, 32 (1982). Petitioner, having lived openly and lawfully in the United States, is entitled to enhanced due process protections beyond those accorded recent entrants at the border.

III. THE PURPORTED BOND HEARING WAS VOID FOR LACK OF JURISDICTION

Respondents simultaneously claim Petitioner received a valid bond hearing and assert he is ineligible for bond as an "arriving alien." This contradiction highlights the jurisdictional defect in Petitioner's bond proceedings. Under Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), immigration judges lack jurisdiction to conduct bond hearings for individuals subject to mandatory detention under § 1225(b), which includes individuals who enter on parole as "arriving aliens." *See* 8 C.F.R. § 1003.19(h)(2)(i); 8 C.F.R. § 1.2. Thus, the April 2 bond hearing was legally void and cannot satisfy due process.

Because immigration judges lack authority to redress Petitioner's unlawful detention, habeas corpus remains the only available and appropriate remedy. A constitutionally meaningful opportunity to challenge the legality of detention must be available, and in this case, that forum is this Court through habeas relief.

IV. RESPONDENTS' CLAIM OF VOLUNTARY RETURN OPTION AS A MEANS OF ENDING DETENTION IS MISLEADING

Respondents suggest Petitioner can terminate detention voluntarily by returning to Venezuela. However, this purported option disregards the widely recognized absence of effective diplomatic ties and practical inability of DHS to effectuate removals to Venezuela on a wide scale. While Petitioner's removal proceedings are not "indefinite" in the post-order sense addressed in *Zadvydas v. Davis*, 533 U.S. 678 (2001), his current detention is nonetheless constitutionally

problematic. Petitioner is pursuing protection under U.S. asylum laws due to a well-founded fear of persecution in Venezuela. As such, the government's suggestion that he may "end detention" by withdrawing his claims and requesting return to Venezuela presents a false and coercive choice — one that due process cannot countenance. The fact that his asylum proceedings remain pending reinforces the need for individualized review of his liberty interests during the interim period.

Petitioner respectfully requests judicial notice under Fed. R. Evid. 201 of these diplomatic realities.

V. CONCLUSION

Petitioner respectfully requests that the Court:

1. Grant the writ of habeas corpus and order Petitioner's immediate release under reasonable supervision;
2. Grant any further relief deemed just and appropriate.

Dated: May 30, 2025

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Francisco "Frank" Symphorien-Saavedra, hereby certify that on May 30, 2025, I electronically filed the foregoing PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS with the Clerk of Court by using the CM/ECF system, which serves all parties with a copy electronically.

s/ Francisco F. Symphorien-Saavedra s/

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