UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Darwin Ramos Argueta A#[redacted] *Petitioner*, v. Kristi Noem, Secretary of the Department of Homeland Security Todd M. Lyons, Acting Director for Immigration and Customs Enforcement Robert Cerna, Acting Field Office Director for the Harlingen Field Office Carlos Cisneros, Officer in Charge of the Port Isabel Detention Center Roberto Ramirez, Deportation Officer *Respondents*	§ § § § § § § § § § § § § § § § § § § §	Civil Action No.: _____

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

Petitioner, DARWIN RAMOS ARGUETA, respectfully petitions for a writ of habeas corpus under 28 U.S.C. § 2241 challenging his continued detention and constructive denial of parole by the U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is an applicant for admission previously paroled into the United States as well as the beneficiary of an approved immediately available visa petition filed by his U.S. citizen spouse, so he is prima facie eligible to adjust status to that of a lawful permanent resident under INA § 245(a) if again released under

parole. Despite this, ICE has constructively denied parole without an adequate or thoughtful explanation, resulting in unreviewable and unlawful detention. Absent this Court's intervention, he will continue to be subject to detention, unable to apply for adjustment of status to that of a lawful permanent resident, and face imminent removal to Honduras, separating him from his United States citizen spouse and United States citizen children. Consequently, he seeks an order of release from detention through the mechanism of parole so that he may continue to pursue his adjustment of status application before the U.S. Citizenship and Immigration Service ("USCIS") who has sole jurisdiction over that application.

I. JURISDICTION AND VENUE

This action arises under the Constitution of the United States, 28 U.S.C. § 2241 and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, and the Administrative Procedures Act ("APA"), 5 U.S.C. § et seq.

This Court has jurisdiction under 28 U.S.C. § 2241; art I § 9, cl 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. § 1331, as Petitioner is presently in the custody and color of authority of the United States and he is contesting the lawfulness of his continued immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

Petitioner is not attacking the merits of a removal order but is instead challenging the constitutionality of his detention pending the resolution of his removal proceedings. Because the constitutionality of Petitioner's detention can be adjudicated without touching on the merits of any final order of removal, jurisdiction of this claim is not precluded by the REAL ID Act. *See Baez v. Bureau of Immigr. & Customs Enf't*, 150 F. App'x 311, 312 (5th Cir. 2005) (per curiam) (unpub.) (citing H.R. Rep. No. 109-72, at 300 (2005)); *see also Gutierrez-Soto v. Sessions*, 317 F.

Supp. 3d 917, 925 (W.D. Tex. 2018) (holding the REAL ID Act did not divest district court of jurisdiction over petitioners' challenge to the constitutionality of their detention).

Venue is proper under 28 U.S.C. § 1391 because Petitioner is in the physical custody of the Respondents and ICE at the Port Isabel Detention Center located at 27881 Buena Vista Boulevard, Los Fresnos, Texas, 78566, located within this judicial district.

II. PARTIES

Petitioner is a native and citizen of Honduras. Petitioner was paroled into the United States on February 10, 2016 until February 9, 2018. On March 21, 2025, the Petitioner was apprehended and taken into ICE custody where he has continuously remained. Petitioner's Immigration Attorney filed a custody redetermination request with the Immigration Judge, but the request was withdrawn after the Immigration Judge found he lacked jurisdiction to review it. The Petitioner's Immigration Attorney also filed a request for parole directly with ICE, but his request for parole remains pending.

Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA. Respondent Kristi Noem is a custodial official acting within the boundaries of this judicial district.

Respondent Todd M. Lyons is the Acting Director for Immigration and Customs Enforcement. He is responsible for the administration of Enforcement and Removal Operations ("ERO") including policies related to detention. Respondent Todd M. Lyons is a custodial official acting within the boundaries of this judicial district.

Respondent Robert Cerna is the Acting Field Office Director for ERO in the Harlingen Field Office located in Harlingen, Texas. Respondent Robert Cerna is responsible for

implementing statutory authority and ICE policies relating to custody in the Harlingen Field Office. Respondent Robert Cerna is a custodial official acting within the boundaries of this judicial district.

Respondent Carlos Cisneros is the Officer in Charge for the Port Isabel Detention Center in Los Fresnos, Texas and is responsible for overseeing custody determinations in the Harlingen Field Office. Respondent Carlos Cisneros is the Petitioner's immediate custodian at the Port Isabel Detention Center located within this judicial district.

Respondent Roberto Ramirez is a Deportation Officer at the Port Isabel Detention Center in Los Fresnos, Texas and is responsible for determining and reviewing custody decisions related to the Petitioner. Respondent Ruben Ramirez is Petitioner's immediate custodian at the Port Isabel Detention Center located within this judicial district.

III. FACTUAL BACKGROUND

Petitioner, DARWIN RAMOS ARGUETA, is a native and citizen of Honduras. Petitioner was granted parole into the United States in Miami, Florida on February 10, 2016 until February 9, 2018. On July 8, 2019, he married his United States citizen spouse, Nataly Michelle Rodriguez in Nueces County, Texas. On May 24, 2022, USCIS approved an I-130 visa petition filed on Petitioner's behalf by his United States citizen spouse, granting him an immediately available visa. Because Petitioner was paroled and has an immediately available visa, he is prima facie eligible for adjustment of status to that of a lawful permanent resident under § 245(a) of the INA. The Petitioner has no criminal history and is not subject to any other grounds of inadmissibility requiring a waiver.

On March 21, 2025, ICE officers appeared at the Petitioner's place of employment in search of Petitioner. At his place of employment, he was apprehended, his parole was

terminated, he was arrested and taken into ICE custody. This was done even though Petitioner does not have a criminal history, does not present a risk to national security, and has a means of legalizing his immigration status. Removal or deportation to Honduras is being sought by ICE who placed him in removal proceedings pursuant to § 240 of the INA.

Petitioner's Immigration Attorney filed a custody redetermination request with the Immigration Judge. However, this request was withdrawn after the Immigration Judge found that he lacked jurisdiction to review ICE's custody determination because Petitioner is an applicant for admission and classified as an arriving alien.

Instead, Petitioner's Immigration Attorney requested dismissal of proceedings or termination so that Petitioner may continue to pursue his adjustment of status application pursuant to § 245(a) of the INA before USCIS, the administrative body with sole jurisdiction to adjudicate his application. On May 2, 2025, the Immigration Judge denied the request, significantly limiting the relief that Petitioner could request in removal proceedings.

On May 15, 2025, pursuant to the Immigration Judge's order, Petitioner's Immigration Attorney requested that ICE counsel join her motion to dismiss proceedings for the same reason, so he could continue to adjust his status before USCIS. On that same day, ICE counsel declined to join a motion to dismiss without citing a reason for their decision.

On May 7, 2025, Petitioner's Immigration Attorney requested release on parole. Despite submitting a parole request with supporting documents relating to his eligibility to adjust status, significant ties to the community, and lack of a criminal history, the request remains pending without an individualized assessment. Regardless, Petitioner's Immigration Attorney was previously informed by ICE that all parole requests are being denied and that "per the new administration, ICE/ERO will not release anyone under parole or bond." *See* Exhibit G.

IV. LEGAL CLAIMS

A. Violation of Due Process Clause

Petitioner's continued and unreviewable detention is a violation of his substantive due process rights as protected by the Fifth and Fourteenth Amendments of the United States Constitution. "Substantive due process analysis must begin with a careful description of the asserted right." *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993) (internal quotation marks omitted). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), 121 S.Ct. 2491 (citing *Foucha v. Lousiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992)).

Although inadmissible aliens are not entitled to the full protection of the Constitution, the Supreme Court has also made clear that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (quotation marks omitted). Moreover, at least one circuit—the Sixth Circuit— has held that aliens, whether inadmissible or deportable, are entitled to substantive due process. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir.2003) (en banc) ("If excludable aliens were not protected by even the substantive component of constitutional due process...we do not see why the United States government could not torture or summarily execute them. Because we do not believe that our Constitution could permit persons living in the United States...to be subjected to *any* government action without limit, we conclude that government treatment of excludable aliens *must* implicate the Due Process Clause of the Fifth Amendment."); *see also Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir.1987) ("[W]hatever

due process rights excludable aliens may be denied by virtue of their status, they are entitled under the due process clauses of the fifth and fourteenth amendments to be free of gross physical abuse at the hands of state or federal officials.").

In the instant case, the petitioner does not contest that he is an applicant for admission and subject to detention under 8 U.S.C. Section 1225(b)(2)(A) as an arriving alien. Aliens detained under section 1225(b)(2)(A), such a Petitioner, have no judicial review process available to them because an immigration judge does not have authority to review this determination. 8 C.F.R. 1003.19(h)(2)(i)(B) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens: ... (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act ...."); *see also In Re X-K-*, 23 I. & N. Dec. at 732 ("There is no question that Immigration Judges lack [custody] jurisdiction over arriving aliens who have been placed in § 240 removal proceedings, because they are specifically listed at 8 C.F.R. § 1003.19(h)(2)(i)(B) as one of the excluded categories.").

Without judicial review, Petitioner is limited to requesting discretionary parole from the Attorney General. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 1003.19(h)(2)(i)(B). "Although § 1225(b) generally mandates the detention of aliens seeking admission pending their removal proceedings, individuals detained under the statute may be eligible for discretionary parole from ICE custody." *Rodriguez v. Robbins*, 715 F.3d 1127, 1132 (9th Cir.2013) ("*Rodriguez I*"); *see also Clark vs. Martinez*, 543 U.S. 371 at 373, 125 S.Ct. 716 (explaining that the detention of an "alien arriving in the United States" is "subject to the Secretary's discretionary authority to parole him into the country"). Indeed, the Attorney General can temporarily parole an alien who is applying for admission to the United States "for urgent humanitarian reasons or significant

public benefit," "to meet a medical emergency[,] or ... for a legitimate law enforcement objective." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 1235.3(b)(2)(iii).

There is no legal mechanism or review process in the statute or regulations for denials of parole. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 1003.19(h)(2)(i)(B). For this reason, the Ninth Circuit has found this reliance on parole to protect the liberty interests of those detained under § 1225(b)(2)(A) to be insufficient, stating, "this lack of review has proven especially problematic when immigration officers have denied parole based on blatant errors: In two separate cases identified by the petitioners, for example, officers apparently denied parole because they had confused Ethiopia with Somalia. And in a third case, an officer denied parole because he had mixed up two detainees' files." *Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir.2015) ("*Rodriguez II* ").

Because aliens detained under § 1225(b)(2)(A) have no access to an individualized determination regarding whether they are properly placed in the § 1225(b)(2)(A) category or properly detained because they present a flight risk and a danger to the community, the Petitioner urges this Court to find that unreviewable and indeterminate detention pursuant to § 1225(b)(2)(A) violates the Petitioner's substantive due process rights. Additionally, the Petitioner urges this Court to find that unreviewable and unjustifiable parole denials likewise violate the Petitioner's substantive due process rights.

B. Arbitrary Agency Action under the APA

Petitioner's continued detention and pending parole request also violates the Administrative Procedure Act ("APA") because ICE has failed to consider all relevant factors and instead has effectively and arbitrarily constructively denied parole by failing to respond to the request. The APA allows courts to set aside executive agency action that is arbitrary, capricious, or an abuse of

discretion. *See* 5 U.S.C. § 706(2)(A). An agency runs afoul of this standard "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *See Sacal-Micha v. Longoria*, No. 1:20-cv 37, 2020 WL 1518861 (S.D. Tex. Mar. 27, 2020) (citing *Tex. Oil & Gas Ass'n v. U.S. E.P.A.*, 161 F.3d 923, 933 (5th Cir. 1998) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983)). Thus, the agency must "examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 43, 103 S.Ct. 2856. "If the agency's reasons and policy choices conform to minimal standards of rationality, then its actions are reasonable and must be upheld." *Tex. Oil & Gas Ass'n*, 161 F.3d at 934.

As clarified in *Sacal-Micha*, Section 702 of the APA waives the Government's sovereign immunity in certain circumstances. *See Sacal-Micha* at 666. First, the plaintiff "must identify some 'agency action' affecting him in a specific way, which is the basis of his entitlement to judicial review." *Alabama-Coushatta Tribe of Tex. v. United States*, 757 F.3d 484, 489 (5th Cir. 2014) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)). Second, the plaintiff must establish that he "suffered legal wrong because of the challenged agency action." *Lujan*, 497 U.S. at 883, 110 S.Ct. 3177. A plaintiff advancing such a claim seeks review "pursuant only to the general provisions of the APA." *Alabama-Coushatta Tribe of Texas*, 757 F.3d at 489. In such an action, "[t]here must be 'final agency action' for a court to conclude that there was a waiver of sovereign immunity". *Id.* (citing *Lujan*, 497 U.S. at 882, 110 S.Ct. 3177). But judicial review under the APA is unavailable when other statutes

"preclude judicial review" or when "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a); *Texas v. United States*, 787 F.3d 733, 755 (5th Cir. 2015). Title 8, United States Code, Section 1182(d)(5)(A) places the decision of granting parole within the discretion of DHS. *See Ramirez-Mejia v. Lynch*, 794 F.3d 485, 491 n.1 (5th Cir. 2015). Still, the "regulations provide further requirements and procedures" that ICE must consider. *Palacios*, 407 F. Supp. 3d at 698 (citing 8 C.F.R. § 212.5). For example, to be paroled, an alien must present "neither a security risk nor a risk of absconding". 8 C.F.R. § 212.5(b).

In the instant case, ICE violated it's discretionary authority to grant parole because it did so without considering any factors that Congress intended it to consider. Instead, ICE has implemented a nationwide policy that all requests for parole will be denied, regardless of each applicant's individual circumstances. In Petitioner's case, they haven't even bothered to respond with the denial. This failure to respondent coupled with previous statements that current ICE policy precludes and prohibits the granting of parole is a constructive denial of parole for Petitioner, who remains in detention facing imminent removal. In their constructive decision denying parole, ICE failed to consider that the Petitioner lacks a criminal history, does not pose a risk to national security, is the beneficiary of an immediately available visa pursuant to an approved I-130 filed by his United States citizen wife, is prima facie eligible for adjustment of status under § 245(a), and does not pose a risk of absconding as a present and supportive father to three young United States citizen children. By refraining from issuing a decision while removal proceedings continue, ICE is undercutting and preventing the Petitioner's ability to adjust his status to that of a lawful permanent resident, even though he has shown he is prima facie eligible for such relief. That outcome contravenes Congress's intent to facilitate family-based immigration and undermines the statutory structure of the INA. In sum, the decision to not

respond to the request is arbitrary, capricious, or an abuse of discretion and fails to explain why release would not serve a significant public benefit.

V. APPLICABLE EXHIBITS

Exhibit A: Notice to Appear and Additional Charges of Inadmissibility/Deportability

Exhibit B: Parole Document

Exhibit C: Notice of Approval of I130 Petition

Exhibit D: Application to Register Permanent Residence

Exhibit E: Two Separate Orders of the Immigration Judge Denying the Petitioner's Request for Dismissal or Termination

Exhibit F: ICE Counsel's Denial of a Request for a Joint Motion to Dismiss

Exhibit G: ICE ERO's Denial of the Immigration Attorney's Previous Parole Request Citing Directive to Deny All Such Requests

Exhibit H: Immigration Attorney's Request for Parole and Unanswered Request for Updates

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

(1) Assume jurisdiction over this matter;

(2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody

(3) Alternatively, order a constitutionally adequate parole review;

(4) Declare the parole denial for Petitioner unlawful under the APA;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412 and on any other basis justified under law; AND

(6) Grant any other relief deemed just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and exact copy of this Petition for Writ of Habeas Corpus Pursuant to 28 USC 2241 was electronically filed with the District Clerk of the Southern District of Texas, Brownsville Division on _June 4, 2025__ and shall or has been served upon the following via the Court's CM/ECF filing system and U.S. Mail:

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