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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

N-E-M-B-, an adult,

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No. 3:25-CV-989-SI

Agency No. A XXX-XXX[redacted]

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

PETITIONER'S REPLY

The Court should grant the writ of habeas corpus on Counts Two and Five. The Respondents' arguments to the contrary are without merit.

I. INTRODUCTION

N-E-M-B- has followed the law, while Respondents have not. On June 10, 2025, Petitioner was detained following his immigration court hearing; after the government sought to terminate his case, agents waited outside the courtroom doors to arrest him. In their papers, Respondents make no effort to explain their unlawful behavior in swiftly detaining N-E-M-B- in the immigration court room lobby in violation of Respondents' own rules and without the process he was due. Their silence speaks for itself: they had no lawful justification for N-E-M-B-'s arrest. Indeed, this Court has concluded as much for individuals detained in nearly the same circumstances. *See Y-Z-L-H- v. Bostock*, Case No. 3:25-cv-00965-SI, ECF 30 (D.Or. July 9, 2025) (granting petition for writ of habeas corpus following courthouse arrest and unlawful revocation of parole without consideration of petitioner's individual facts or circumstances); *O-J-M- v. Bostock*, Case No. 3:25-cv-00944-AB, ECF 32 (D.Or. July 17, 205) (similar); *see also Jimenez v. Bostock*, 2025 WL 2430381, at *5 (D. Or. Aug. 22, 2025) (granting petition for writ of habeas corpus where petitioner's revocation of release was "not based on an individualized determination").

Having made no attempt to justify their June 10 detention of N-E-M-B-, Respondents' assurances to this Court that their unlawful conduct is not reasonably likely to recur ring hollow. Indeed, Respondents' papers only underscore that, absent Court intervention, N-E-M-B- will once again be subject to Respondents' whims—not the rule of law.

This Court can order relief to sufficiently protect N-E-M-B- from Respondents' future unlawful conduct, as it has done before. *See, e.g., Jimenez*, 2025 WL 2430381, at *2 (granting habeas relief after petitioner was released from detention). The Court should grant the writ of habeas corpus and any other relief it deems necessary to ensure that N-E-M-B- is not detained in violation of any statute, regulation, or the U.S. Constitution.

II. BACKGROUND

N-E-M-B- is an asylum seeker from Ecuador. [redacted] he sought protection in the United States in accordance with his rights under 8 U.S.C. § 1158. Declaration of N-E-M-B- ("hereinafter "Pet. Decl.") ¶ 4. On or about August 23, 2023, Respondent DHS released Petitioner from its custody on an Order of Release of Recognizance pursuant to 8 U.S.C. § 1226(a) based on the individual facts of his case. *Id.* Ex. B, Order of Release on Recognizance. N-E-M-B- moved to Oregon and continued to comply with the immigration process. Petitioner Decl. ¶¶ 6–9. He has not engaged in any criminal activity and has no criminal record. *Id.* ¶ 19. On or about August 23, 2023, Respondents commenced removal proceedings against N-E-M-B- in immigration court, entitling him to present an asylum claim pursuant to the procedures of 8 U.S.C. § 1229a. *Id.* Ex. A, Notice to Appear.

On June 10, 2025, Petitioner appeared for his first immigration court hearing, at which Respondent ICE moved to dismiss his case. *Id.* ¶¶ 9-10. N-E-M-B- told the judge that he did not want a dismissal and that he wanted time to speak with an attorney, but the immigration judge granted the dismissal over his objection. *Id.* ¶ 10; Ex. C, IJ Order of Dismissal. Shortly after, masked ICE agents arrested Petitioner in the waiting room of the immigration court. Pet. Decl. ¶¶ 13–14. Respondents' agents took his belongings, handcuffed him, and drove him to a building,

where they took his fingerprints, replaced his handcuffs with ankle shackles, and placed him in a holding cell. *Id.* ¶¶ 14-17.

At 10:17am PT, shortly after Respondents took Petitioner into custody, Petitioner through his counsel filed a habeas corpus petition with this Court. *See* ECF 1. At 11:35am PT, the Court ordered that "Respondents shall not move Petitioner outside the District of Oregon without first providing advance notice of the intended move" for 48 business hours and, should they intend to transfer him, explaining why "Respondents believe that such a move is necessary." *See* ECF 4 ¶ 4. The order allowed the notice period to be shortened or lengthened as appropriate by further court order. *Id.* Later, Respondents released Petitioner from detention on the conditions of a one-year Interim Notice of Parole, including enrolling him in the alternatives to detention program "ISAP". Pet. Decl. ¶ 18; *id.* Ex. D, Interim Notice of Parole.

On July 3, 2025, Petitioner timely filed an appeal with the Board of Immigration Appeal ("BIA") challenging the immigration judge's dismissal of his § 1229a proceedings. ECF 18-1. His appeal remains pending. *Id.* Ex. E, Screenshot from Automated Case Information.

III. ARGUMENT

On June 10, 2025, after Petitioner filed his lawsuit, Respondents decided to release N-E-M-B-. Respondents again determined that Petitioner was not a flight risk or a danger; therefore, they released him from custody. However, Respondents did not acknowledge N-E-M-B-'s existing release on recognizance under their 8 U.S.C. § 1226(a) custody authority. Because Respondents never made an *individualized* custody redetermination revoking N-E-M-B-'s release, as required by 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9), the terms of his 8 U.S.C. § 1226(a) release continue to apply. *See* Pet. Decl. Ex. B, Petitioner's Order of Release on Recognizance (where the cancellation box for the order is unchecked). Instead of acknowledging as much, Respondents

wrongly issued a *new* "interim parole" document that purports to grant Petitioner one year of parole, through approximately June 10, 2026. However, it is a statutory impossibility to issue parole concurrently while a § 1226(a) release order is in effect. Respondents may not assert § 1225(b) custodial authority over an individual such as N-E-M-B- who was released under § 1226(a), as the statute explicitly provides for the only mechanism to revoke release and resume custody under § 1226(b).

Separately, on July 29, 2025, Respondents represented to this Court that they will not detain Petitioner "through the adjudication of his pending BIA appeal, absent criminal activity, failure to comply with release requirements set by ERO, or a change in Petitioner's pending case with the BIA." Declaration of Jeffrey Chan ("Chan Decl"), ECF 17, ¶ 8. Nowhere do Respondents explain what constitutes a "change in Petitioner's pending case with the BIA" and they are silent with respect to whether they will redetain N-E-M-B- following the adjudication of his administrative appeal or why that would constitute a reason to reconsider his release because, win or lose, his BIA appeal is unlikely to definitively end his immigration court proceedings.[1]

In filing his *habeas corpus* petition, N-E-M-B- sought freedom from unlawful executive detention, requesting (1) a return to the status quo of his freedom from detention, and (2) a remedy ensuring that the Respondents would not engage in similar unlawful executive activity against him. But his current position is precarious because he has not been returned to the *status quo ante litem*; instead, the Respondents have purported to unfavorably subject him to a term-limited parole without any individualized revocation of his ongoing release on recognizance. They also have conditioned his release on factors that extend beyond flight risk or dangerousness. More troubling,

[1] If Petitioner prevails on his administrative appeal, he will continue to § 1229a proceedings before the immigration court. If Petitioner does not prevail on his administrative appeal, he may appeal as of right to the Ninth Circuit Court of Appeals. 8 U.S.C. § 1252(a).

Respondents have not repudiated their past unlawful actions or given Petitioner sufficient certainty that his liberty will be protected without an order from this Court.

A. Respondents have not mooted N-E-M-B-'s petition for habeas corpus.

In filing this petition, N-E-M-B- challenged the validity of his executive detention itself and brought a "core" habeas claim for which relief is clearly available. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025); *Nance v. Ward*, 597 U.S. 159, 167 (2022) (confirming that a petitioner "must proceed in habeas when the relief he seeks would necessarily imply the invalidity of his conviction or sentence") (internal quotations omitted). Notwithstanding Petitioner's conditional release on June 10, this Court still has authority to grant the relief that N-E-M-B- seeks: declaratory and injunctive relief that would ensure his continued freedom from unlawful detention and protection from a midnight, no-notice transfer outside the district of Oregon away from his counsel and community. *See* 28 U.S.C. § 2241 et. seq.; 28 U.S.C. § 2201 et. seq., 28 U.S.C. § 1651(a); *cf. Robbins v. Christianson*, 904 F.2d 492, 494 (9th Cir.1990) ("If it appears that we are without power to grant the relief requested, then this case is moot." (internal citations omitted.)).

Indeed, the Eugene Division of this Court has ordered precisely such relief in a similar case. In *Jimenez v. Bostock*, Respondents re-detained the Petitioner without individualized consideration and in violation of his rights. *Jimenez v. Bostock*, 2025 WL 2430381, at *7 (D. Or. Aug. 22, 2025). As in this case, Petitioner filed a petition for a writ of habeas corpus and Respondents released Petitioner. N-E-M-B-, like the Petitioner in *Jimenez*, had his initial release decision under § 1226(a) revoked without an individualized determination as required by § 1226(b). In *Jimenez*, the court subsequently issued the very relief sought here—a finding that the revocation of Petitioner's release from custody was unlawful, protection from future no-notice transfer, and an order not to detain Petitioner without an individualized determination. *Jimenez*, 2025 WL 2430381, at *7. This Court has the authority to grant the same meaningful relief granted

in *Jimenez*, and Respondents' arguments to the contrary are wrong. Indeed, N-E-M-B- is in an even stronger position for relief than the petitioner in *Jimenez*, as Respondents here have imposed new conditions of release on him, rather than correctly deferring to his existing release on recognizance from August 2023.

"[A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Ellis v. Railway Clerks,* 466 U.S. 435, 442 (1984). Here, Petitioner maintains an interest in his continued liberty and the conditions of his release.[2] Respondents have unlawfully converted his detention authority from § 1226(a) to § 1225(b) in violation of the INA. As explained *infra*, Respondents have also added new conditions to N-E-M-B-'s release that were not present before – such as introducing an expiration date for Petitioner's grant of interim parole, in contrast to the lack of temporal limitations for § 1226(a) release orders.

Moreover, there are "collateral consequence[s]" that may be redressed by success on his petition. *See Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007). "For a habeas petition to continue to present a live controversy after the petitioner's release or deportation, . . . there must be some remaining 'collateral consequence' that may be redressed by success on the petition." *Id.* Respondents released N-E-M-B- from detention on a new set of conditions, varying in substance and length from his previous release on recognizance under Respondents' § 1226 custody authority. Respondents have not asserted any individualized revocation of Petitioner's prior release that would warrant the issuance of a new release document. The new conditions of N-E-M-B-'s interim parole are thus undeniably "collateral consequences" that create "concrete legal

[2] Petitioner remains "in custody" under 28. U.S.C. § 2241(c)(3) though not currently confined. "The Supreme Court has repeatedly held that the in-custody requirement [of 28 U.S.C. § 2241] is met where the Government restricts a petitioner's freedom of action or movement," including while on immigration release orders. *See Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), *citing Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

disadvantages" that may be redressed by success on this petition. *See Zegarra-Gomez v. I.N.S.*, 314 F.3d 1124, 1125 (9th Cir. 2003) (a petitioner's deportation does moot a habeas when "collateral consequences aris[e] from the deportation that create concrete legal disadvantages.").

First, Respondents actions have unlawfully diminished Petitioner's rights by arbitrarily imposing new temporal limits on his release from custody along with new substantive conditions of release. In August 2023, Respondents made an individualized decision to release Petitioner on recognizance, subject to 8 U.S.C. § 1226(a), on the basis that Petitioner was neither a flight risk nor a danger to the community. *See* Pet. Decl. Ex. B. Such release is not time-limited; instead, it continues unless and until Respondents make a custody redetermination revoking the release, pursuant to 8 U.S.C. § 1226(b). When Respondents detained N-E-M-B- on June 10, they did so without conducting an 8 U.S.C. § 1226(b) custody redetermination that considered his individual facts, as evidenced by the fact that there were no changes in his personal facts or circumstances that would alter the flight risk or danger analysis. *See* Pet. Decl. ¶¶ 12–15, 19 (detailing detention after attending court hearing and lack of any criminal record). Here, Respondents' implied revocation of Petitioner's release does not comply with the statute or regulation because they made no individualized decision that considered his facts and circumstances under 8 U.S.C. § 1226(b). Instead, they imposed a new one-year limit on N-E-M-B-'s release by asserting an entirely different release authority, 8 U.S.C. § 1182(d)(5). Respondents have subsequently asserted a distinct time limit to this Court: that they "will not detain Petition again through the adjudication of his pending BIA appeal," regardless of its outcome. *See* Chan Decl. ¶ 8. Respondents' parole authority under 8 U.S.C. § 1182(d)(5) does not correspond to Respondents' current custody

authority under 8 U.S.C. § 1226,[3] thus the new grant of interim parole imposes collateral consequences on N-E-M-B- by establishing new temporal limits on his release. Respondents do not try to justify this new temporal limitation, only arguing that it moots his case. ECF 16 at 4.

Second, the interim parole imposes new conditions of release because it may be terminated if there is "a change in Petitioner's pending case with the BIA" – a condition not present in the initial terms of his release under § 1226(a) and that bears no clear relation to the flight risk or danger analyses required for revocation of a custody determination under 8 U.S.C. § 1226(b). Petitioner is thus subjected to "concrete legal disadvantages" from both the limited duration and narrower, unclear purpose of his new interim parole. *Zegarra-Gomez*, 314 F.3d at 1125.

Because Petitioner is subject to collateral consequences from the terms of his release that may be redressed by this Court, Respondents have not met their heavy burden to show that his petition is moot.

B. Respondents have failed to establish that their unlawful conduct will not recur.

Respondents may not "automatically" moot N-E-M-B-'s case by releasing him after he sued. *Federal Bureau of Investigations v. Fikre*, 601 U.S. 234, 241 (2024); *E-M- v. Bostock, et al.*, Case No. 3:25-cv-1083-SI, ECF 28 at 7 (D.Or. Aug. 12, 2025) at 6 ("[S]imply voluntarily releasing

[3] Because Petitioner's release under 8 U.S.C. § 1226(a) may only be revoked pursuant to 8 U.S.C. § 1226(b), Respondents' invocation of their separate parole authority suggests that they believe they have a separate statutory basis of custody for Respondents. However, Respondents have identified no such authority. While Respondents do not make clear the authority or purpose for which the parole was authorized—apart from attempting to right their wrong of his unlawful detention in the first place—if such parole is valid, it would take N-E-M-B- out of his initial custody authority under Section 1226(a). Respondents do not offer an alternative custody authority to which he could lawfully be subjected to, although to the extent Respondents would manufacture this "interim parole" mandatorily detain N-E-M-B- under Section 1225(b)(2), Respondent is unquestionably disadvantaged.

Petitioner after he filed his Petition fails to moot his claims.").[4] Instead, where Respondents voluntarily cease allegedly unlawful conduct, they bear a "formidable burden" of proving mootness. *Id.*; *Fikre*, 601 U.S. at 243 ("In all cases, it is the defendant's 'burden to establish' that it cannot reasonably be expected to resume its challenged conduct[.]"); *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953) (noting that "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot"); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) ("[A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued."). To meet this formidable burden, the Supreme Court has required either (1) evidence that the defendant has repudiated its past conduct, *Los Angeles County v. Davis*, 440 U.S. 625, 628, 632-33 (1979), or (2) a "clearly effective barrier" to the conduct's recurrence, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017). Neither is present here.

1. Respondents have not repudiated their past conduct.

Respondents have not met their high burden to moot this case because they have in no way admitted, let alone repudiated their unlawful conduct. Nowhere in their papers do Respondents provide *any* justification for their re-detention of N-E-M-B- on June 10.[5] *See* ECF 16. To the extent

[4] Respondents are incorrect that it is "unclear whether the doctrine of voluntary cessation applies to habeas cases." ECF 16 at 5. While the Ninth Circuit declined to answer this question in 1991 in *Picrin-Person v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991), the Ninth Circuit has "since applied the doctrine to an immigration habeas case," *see E-M- v. Bostock, et al.*, Case No. 3:25-cv-1083-SI, ECF 28 at 7 (D.Or. Aug. 12, 2025) (applying the voluntary cessation doctrine in a habeas case) (citing *Diouf v. Napolitano*, 634 F.3d 1081, 1084 n.43 (9th Cir. 2012) *abrogated in part on other grounds* by *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (same)). So too has the Supreme Court. *See A. A. R. P. v. Trump, 605 U.S. ----,* 145 S. Ct. 1364, 1369-70 (2025) (applying the voluntary cessation doctrine and finding the government's agreement not to remove petitioners while their habeas petitions were pending did not moot the case).

[5] That Respondents submitted near identical papers and declarations in another pending habeas petition, without engaging with the fact that N-E-M-B- and the petitioner in that case are subject

that Respondents had a legal basis to detain N-E-M-B- on that date, it would have been through an individualized revocation of his release under 8 U.S.C. § 1226(b). But Respondents have not asserted that they made any such individualized determination. Instead, Respondents' focus on the outcome of Petitioner's BIA appeal, *see* ECF 16 at 5-6, strongly implies that they sought to detain Petitioner on June 10 pursuant to 8 U.S.C. § 1225(b)(1) – a legal impossibility.[6]

Section 1225(b)(1)(A)(i) could not justify Respondents' detention of Petitioner on June 10 because N-E-M-B- is not and has never been in expedited removal proceedings.[7] When N-E-M-

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to two distinct statutory custody regimes, only underscores that they have not repudiated their conduct. *Compare J-C-R-M- v. Bostock*, 3:25-CV-00990-SI, ECF 16 (D.Or. July 10, 2025) *with* ECF 16.

[6] In similar cases, Respondents have invoked the expedited removal custody authority at 8 U.S.C. § 1225(b)(1)(A)(i) as the true cause of Petitioner's detention. While they do not do so here, Respondents were undoubtedly acting pursuant to the same aim, pursuant to directives to categorically detain asylum seekers like N-E-M-B- and place them in expedited removal to punish them and deter others from lawfully seeking asylum. *See, e.g., E.O. 14165, Securing Our Borders*, 90 Fed. Reg. 8467, 67-68 (Jan. 20, 2025); Office of the Secretary, Dep't of Homeland Security, *Designating Aliens for Expedited Removal*, 15 Fed. Reg. 8139 (2025); Brittany Gibson & Stef W. Kight, *Scoop: Stephen Miller, Noem tell ICE to supercharge immigrant arrests* (May 28, 2025), Axios, (DHS Secretary "demand[ing] that immigration agents seek to arrest 3,000 people a day"), available at https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller; Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ordering ICE to conduct the "largest Mass Deportation Program in History."). This Court has now repeatedly found that no such expedited removal custody authority is present at the very least unless and until a petitioner's § 1229a proceedings have fully concluded. *See Y-Z-L-H-*, Case No. 3:25-cv-00965-SI, ECF 32 at 34 (ordering Respondents not to redetain Petitioner during "during the pendency of his removal proceedings without prior leave of this Court"); Hearing Transcript and Oral Proceedings, *O-J-M- v. Bostock*, Case No. 3:25-cv-00944-AB at 36 (July 14, 2025) (explaining that a "massive legal framework also provides the proper process to initiate expedited removal proceeding under 8 United States Code 1225, and to arrest and detain a person subject to those expedited removal proceedings.").

[7] In contrast to immigration court proceedings, expedited removal proceedings under § 1225(b)(1)(A)(i) allow a low-level border enforcement agent to order removal of certain noncitizens quickly from the United States "without further hearing or review" unless a noncitizen expresses a fear of return or an intent to apply for asylum. After expressing such fear or intent, the noncitizen must be referred for a credible fear interview by an asylum officer, 8 U.S.C. § 1225(b)(1)(A)(ii); detention is mandated during the credible fear process, *id.* § 1225(b)(1)(B)(iii)(IV).

B- arrived at the U.S. border to seek protection, Respondents chose to issue him a Notice to Appear and to place him in § 1229a proceedings *instead of* processing him through expedited removal under 8 U.S.C. § 1225(b)(1). *See* Pet. Decl., Ex. A; Chan Decl. ¶ 5 (CBP "issued a Notice to appear"). Simultaneously, they exercised their custody authority under 8 U.S.C. § 1226(a) to release him on his own recognizance. Respondents' only lawful custody authority over Petitioner is thus § 1226 – *not* § 1225.

Moreover, because N-E-M-B- was in § 1229a proceedings at the time of his arrest and remains in those proceedings; Respondents could not, and cannot now, detain him pursuant to § 1225(b)(1). The adjudication of Petitioner's BIA appeal will not change this result. If Petitioner prevails on his appeal, he will remain in § 1229a proceedings before the immigration court. If Petitioner loses his appeal, he has the opportunity to seek review before the Ninth Circuit Court of Appeals. *See* 8 U.S.C. § 1252(b)(1). And even if Petitioner exhausts further review, and his dismissal becomes final, the dismissal of his § 1229a proceedings would not permit Respondents to detain him without going through the individualized determination that he is due under the plain terms of the statute and regulations. *See* 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

Separately, N-E-M-B- cannot be subject to expedited removal even if his § 1229a proceedings are dismissed as a final matter. By the statute's plain language, Petitioner does not fit into either of the two categories of noncitizens to whom expedited removal may properly apply: (1) noncitizens who are "arriving," and (2) noncitizens who have "not been admitted or paroled."

8 U.S.C. § 1225(b)(1)(A)(iii)(II).[8] N-E-M-B- cannot *now* be deemed an "arriving"[9] noncitizen because he has been present in the United States for over two years; in other words, he has arrived. *Accord. Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1201 (S.D. Cal. 2019) (referencing legislative history behind the term "arriving" to encompass those "attempting to enter, at the point of entry, or just having made entry" to the United States). Likewise, he was released – by Respondents – into the United States under their § 1226 custody authority. Indeed, Respondents *chose* to issue N-E-M-B- an NTA, instead of processing him through expedited removal. Respondents thus have no authority to detain N-E-M-B- under 8 U.S.C. § 1225(b)(1).

Respondents' assertion that "[t]he outcome of the BIA appeal affects what detention authority Petitioner could be subjected to[,]" ECF 16 at 6, proves the point that they have not met their formidable burden of showing the challenged conduct is not reasonably likely to recur. At *no point* will it become lawful for Respondents to detain Petitioner under 8 U.S.C. § 1225(b)(1). The timing of the BIA decision is also irrelevant. *Contra* ECF 16 at 5-6. The voluntary cessation doctrine applies "whether the challenged conduct might recur immediately or later at some more propitious moment." *Fikre*, 601 U.S. at 243. *See also Parents Involved in Community Schools v. Seattle School Dist.*, 551 U.S. 701, 719–720 (2007) (declining to dismiss a case as moot five years after the defendant voluntarily ceased its challenged conduct); *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982) (similar). Because Respondents have neither acknowledged nor repudiated their prior unlawful conduct, this Court can and should grant Petitioner relief.

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[8] Moreover, the two-year limitation period during which Respondents may apply expedited removal has already lapsed and thus the Petitioner is beyond the reach of the expedited removal statute's terms. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

[9] An "arriving" noncitizen is "an applicant for admission coming or attempting to come into [or transit through] the United States at a port-of-entry" or who has been interdicted in U.S. or international waters and brought to the United States. 8 C.F.R. § 1001.1(q).

2. Respondents have established no clearly effective barrier to future unlawful conduct.

Respondents argue that N-E-M-B-'s case is moot because they have provided this Court assurances not to re-detain N-E-M-B- "until the resolution of his BIA appeal absent a change in circumstances," and "issued parole valid for one year." ECF 16 at 4-5. As explained *supra* at Section III.A, this interim parole does not return N-E-M-B- to his conditions of release prior to Respondents' unlawful actions. Nor do Respondents' assurances prevent future unlawful detention.

Respondents liken this case to *Picrin-Peron*, in which Defendants' sworn declaration supporting a one-year parole was sufficient assurance for the court. But the highly discretionary nature of Petitioner's current interim parole distinguishes this case. Since *Picrin* was decided in 1991, "the Supreme Court and Ninth Circuit more recently have held that the Department of Homeland Security's conditional release of a petitioner who is subject to re-detention at the discretion of federal authorities does not moot a habeas challenge to immigration detention." *Singh v. Acting Dir. of DHS-ICE*, 2021 WL 674122, at *2 (C.D. Cal. Feb. 19, 2021). In *Clark v. Martinez*, the Supreme Court held that the "case continues to present a live case or controversy" where petitioner's release "is not only limited to one year, but subject to the Secretary's discretionary authority to terminate." 543 U.S. 371, 376 n.3 (2005); *see also Diouf v. Napolitano*, 634 F.3d 1081, 1084 n.3 (9th Cir. 2011) ("The voluntary cessation exception to mootness applies because—absent action by this court—the government could redetain Diouf, and deny him a bond hearing, at any time."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117–18 (9th Cir. 2010) (similar).

Here, the plain terms of Respondents' assurances are highly discretionary and establish an insufficient barrier to a future unlawful arrest. *See* Chan Decl. ¶ 8. N-E-M-B-'s "Interim Notice Authorizing Parole" specifically states that "[p]arole is entirely within the discretion of ICE and

can be terminated at any time for any reason." *See* Pet. Decl., Ex. D, Interim Notice of Parole. Additionally, Respondent ERO – and ERO alone – has promised not to detain Petitioner absent "failure to comply with release requirements set by ERO", without offering any further clarification as to what those release requirements are or may be. ERO's assurances also end if there is a "a change in Petitioner's pending case with the BIA" – though Respondents provide no additional clarity on what kind of undefined change they may mean. The vague nature of Respondents' assurances distinguish this case from *Picrin-Peron*, in which the petitioner's release was based on extremely clear terms. *See* 30 F.2d at 776 (extending parole for one year barring "reinvolvement with the criminal justice system, a change in the Cuban government enabling him to return to Cuba, or the willingness of a third country to accept him"). Even if submitted under oath,[10] Respondents' sworn statements are thus an insufficient barrier to Petitioner's future unlawful detention.

Notably, Respondents' assurances are also timebound only "through the adjudication of [Petitioner's] pending appeal," Chan Decl. at ¶ 8—underscoring the likelihood that the challenged conduct is reasonably likely to recur following the adjudication of the appeal. Such an assurance not to detain Petitioner again solely "through the adjudication of his pending appeal" is more akin to *E-M-*, where "Defendants submitted a declaration stating that ICE would not redetain Petitioner only through July 24, 2025." *E-M-*, ECF 28 at 6 (finding voluntary release failed to moot claims). Respondents' assurances do not adequately protect N-E-M-B- from future unlawful detention.

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[10] The accuracy of Respondents' declarations has been at issue in multiple habeas cases recently before this Court. *See, e.g.*, *M-S-L v. Bostock et al., No. 6:2025-cv-01204-AA*, ECF 32 at 17 (D. Or. Aug. 21, 2025) (granting petition for writ of habeas corpus and observing "several statements in the Declarations submitted by Respondents which might, with charity, be described as serious inaccuracies"); *E-M-*, Case No. 3:25-cv-1083-SI, ECF 28 at 2 (granting discovery based on Respondents' inconsistencies on the record).

C. The Court should grant the writ under Counts Two and Five because Respondents' decision to re-detain N-E-M-B- was unlawful.

In their response, Respondents do not even attempt to provide the "true cause" for their decision to detain a law-abiding individual released on parole. *See* 28 U.S.C. § 2243. Indeed, Respondents' own regulations and policies direct that, under the facts presented, N-E-M-B- should not have been detained at all on June 10. Respondents' decision to do so is an expression of lawlessness by an agency seeking to use their "their "power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[11]

Respondent's decision to re-detain N-E-M-B- was unlawful under the Administrative Procedure Act ("APA"), the Immigration and Nationality Act ("INA"), federal regulations, and the U.S. Constitution. Because Respondents' June 10 detention of Petitioner was arbitrary and capricious and in violation of law, including in violation of N-E-M-B-'s due process rights, this Court should grant the writ.

1. Respondents' decision to revoke N-E-M-B-'s release was made irrespective of his individual facts and circumstances.

Revocation decisions under 8 U.S.C. § 1226(b) are entrusted to DHS, who must exercise its discretion lawfully. 8 C.F.R. § 236.1(c)(9). The regulation provides that "[w]hen a[noncitizen] who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the [enumerated official].") *Id.* Discretion is cabined by law; here, the lawful exercise of discretion for civil detention requires that DHS determine on an individualized basis whether N-E-M-B- is a flight risk or a danger to the community. *See* 8 U.S.C. § 1226(a); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA

[11] *See* Donald J. Trump, @realDonaldTrump, Truth Social (June 15, 2025 5:43pm), https://truthsocial.com/@realDonaldTrump/114690267066155731.

2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). If Respondents fail to exercise their discretion because they are applying a categorical rule (such as subjecting Petitioner to mandatory detention), fulfilling a quota or mandate, or disregarding the flight risk or dangerousness factors, they are not lawfully exercising discretion, and their revocation decision is reviewable in habeas. *See, e.g., Jimenez v. Bostock*, 2025 WL 2430381 at *5.

Here, Respondents' implied revocation of Petitioner's release does not comply with the statute or regulation because Respondents made no individualized decision that considered his facts and circumstances under 8 U.S.C. § 1226(b). Indeed, Respondents have offered no justification at all for their decision to revoke release or to re-detain N-E-M-B-. *See* ECF 15. Because Respondents conducted no individualized analysis of N-E-M-B-'s facts or circumstances, including the *Matter of Guerra* factors, when deciding to detain him, their custody revocation violated the INA and implementing regulations. *See* 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

Additionally, Respondents violate the APA by failing explain why they changed course so dramatically and re-detained Petitioner after having released him previously. *See* 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (agencies must articulate a "satisfactory explanation" for action, "including a rational connection between the facts found and the choice made").

a. N-E-M-B-'s due process rights were violated when Respondents arbitrarily and categorically revoked his release.

Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). It is well-established that the Due Process Clause of

the Fifth Amendment to the U.S. Constitution applies to "all 'persons' within the United States," irrespective of their immigration status. *J.G.G.*, 145 S. Ct. at 1005 (citing *Reno v. Flores,* 507 U.S. 292, 306 (1993)); *Zadvydas*, 533 U.S. at 693. While Respondents have discretion to revoke the Petitioner's custody decision under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See id.* at 698; *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that due process applies to revocation of parole); *Noem v. Abrega Garcia*, 604 U.S. ----, 145 S. Ct. 1017 (2025) (confirming that Respondents must provide notice and an opportunity to respond prior to revoking release under § 1226(a)).

In applying the *Mathews* balancing test, it is clear that Petitioner did not receive the process he was due. N-E-M-B- has strong private interests in maintaining his freedom from detention, and in avoiding separation from his community. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Morrissey*, 408 U.S. at 482 (recognizing that termination of the liberty of a parolee "inflicts a grievous loss on the parolee and often on others") (internal quotations omitted). The government's interest here is weak and its burden would be very small, as the procedural safeguard that Petitioner seeks is merely what Respondents are already legally required to do: conduct an individualized assessment to determine whether his own facts and circumstances have changed such that he is now a flight risk or a danger to her community should they seek to revoke his release. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Had Respondents conducted such an assessment, they would have concluded that no facts or circumstances had changed to justify a revocation of Petitioner's release on recognizance. Indeed, it is not clear that Respondents have any interest in re-detaining Petitioner. *See Addington v. Texas*, 441 U.S. 418, 426 (1979). ("The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger."); *Morrissey*, 408 U.S. at 483 ("[T]he State has

no interest in revoking parole without some informal procedural guarantees."). Because Respondents revoked N-E-M-B-'s custody determination without a rational and individualized determination of whether he is a safety or flight risk, and they have not identified any government interest to re-detain him, they violated his constitutional right to due process. What's more, N-E-M-B- was also not provided with any notice or the opportunity to respond prior to the revocation of his release, in deprivation of his due process rights.

Indeed, a judge in this District recently held that a petitioner's due process rights were violated where her release under 1226(a) was revoked in the very manner that N-E-M-B-'s was—arrest in the courtroom lobby immediately following the dismissal of her immigration proceedings, without any individualized custody revocation, notice, or opportunity to respond. In that case, the court's oral decision concluded that "the government unquestionably went about its arrest and detention of [petitioner] the wrong way …[,]" where the petitioner was arrested "despite the fact that she had by that point complied with all conditions of release." Transcript and Oral Decision, *O-J-M- v. Bostock*, Case No. 3:25-cv-00944-AB at 37 (D.Or. July 14, 2025). So too here: none of N-E-M-B-'s facts had changed to negatively alter his risk of flight or danger to the community, and Respondents conducted no individualized determination in arresting him at the courthouse, in violation of due process.

Because Respondents have not even tried to offer a lawful explanation for Petitioner's custody, the Court should grant the writ.[12]

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[12] Respondents argue that, as a prudential matter, this Court should require N-E-M-B- to wait to seek relief in this Court until his "BIA appeal resolves." ECF 16 at 8. But their reliance on N-E-M-B-'s appeal before the BIA is once again misplaced. Because N-E-M-B- does *not* challenge the custody decision of an immigration judge, the cases on which Respondents rely are inapposite. *See, e.g.*, *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (addressing habeas review of an *immigration judge's* decision to deny bond without first appealing to the BIA). As this Court

IV. CONCLUSION

For the aforementioned reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and issue the relief sought by N-E-M-B-. *See* ECF 1 at 19-20. Should the Court find the requested relief overbroad, N-E-M-B- requests that the Court order that: (1) the revocation of N-E-M-B-'s release without an individualized determination based on his individual facts and circumstances was unlawful; (2) Respondents may not re-detain Petitioner unless an authorized official under 8 C.F.R. § 236.1(c)(9) makes an individualized finding of probable cause that Petitioner is a flight risk or a danger to the community; and (3) Respondents may not remove Petitioner from the District of Oregon without 30 days' notice of their intent to do so, to give him the opportunity to challenge any future unlawful detention through appropriate habeas proceedings before this court.

Dated: September 29, 2025.

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has found in a similar case, "[i]n [petitioner's] current remaining immigration process, Petitioner has no right to challenge respondents' decision to terminate his parole." *See Y-Z-L-H-,* Case 3:25-cv-00965-SI, ECF 30 at 26.