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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

J-C-R-M-, an adult,

Petitioner,

v.

CAMMILLA WAMSLEY, et al.,

Respondents.

Case No. 3:25-CV-00990-SI

Agency No. A XXX-XXX-473

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 Count Two (unlawful executive detention).[1] The Respondents' arguments to the contrary are without merit.

I. INTRODUCTION

J-C-R-M- 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 J-C-R-M- 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 J-C-R-M-'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 attempts to justify their June 10 detention of J-C-R-M-, Respondents' assurances to this Court that their unlawful conduct is not reasonably likely to recur ring hollow.

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[1] The Court does not need to reach the remaining counts and may dismiss them without prejudice as factually moot because they concern allegations about the use of expedited removal that, at this time, Respondents have not asserted as a basis for Petitioner's custody.

Indeed, Respondents' papers only underscore that absent Court intervention J-C-R-M- will once again be subject to Respondents' whims—not the rule of law.

This Court can order relief to sufficiently protect J-C-R-M- from Respondents' future unlawful conduct, as it has done before. *See 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 J-C-R-M- is not detained in violation of any statute, regulation, or the U.S. Constitution.

II. BACKGROUND

J-C-R-M- is an asylum seeker from Venezuela. [redacted] J-C-R-M- sought protection in the United States, in accordance with his rights under 8 U.S.C. § 1158. Declaration of J-C-R-M- ("hereinafter "Pet. Decl.") ¶¶ 3, 9. As instructed by the U.S. government, J-C-R-M- scheduled an appointment to the enter the country through the CBP One App to seek asylum, he attended the appointment, and Respondents released him into the United States on or about October 20, 2024, granting him parole for two years under 8 U.S.C. § 1182(d)(5) so he could seek protection in the United States. *Id.* ¶¶ 4, 6; Ex. D, CBP One Appointment; Ex. B, I-589 Application (showing at Part A.1 question 19 parole authorized through October 19, 2025). On or about October 20, 2024, Respondents also commenced removal proceedings against J-C-R-M- 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.

J-C-R-M- moved to Oregon and continued to comply with his immigration process, including changing his immigration court venue to the Portland Immigration Court. Pet. Decl. ¶¶ 7–8; Ex. E, Order granting Change of Venue. He applied for and was granted work authorization through October 19, 2026, based on the duration of his parole. *Id.* ¶ 6; Ex. G, I-765 Approval

Notice. He timely submitted his application for asylum to the Portland Immigration Court. Pet. Decl. ¶ 9; Ex. B. He has not engaged in any criminal activity and has no criminal record. *Id.* ¶ 24.

On June 10, 2025, Petitioner appeared for his first immigration court hearing, at which Respondent ICE moved to dismiss his active asylum proceedings. *Id.* ¶ 11, 13. J-C-R-M- told the judge that he did not want a dismissal and that he did not want to be arrested or deported, but the immigration judge granted the dismissal stating that it was not a deportation order and he could appeal. *Id.*; *id.*, Ex. C, IJ Order of Dismissal. Shortly after, masked ICE agents arrested Petitioner in the waiting room of the immigration court. Pet. Decl. ¶¶ 16–19. 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.* ¶ 17-20.

At 10:36am PT, shortly after Respondents took Petitioner into custody, Petitioner through his counsel filed a habeas corpus petition with this Court. *See* ECF 1. At 11:46am 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. ¶ 22; *id.* Ex. H, Interim Notice of Parole. To date, Petitioner continues to faithfully comply with his reporting requirements every week. Pet. Decl. ¶ 23.

On June 23, 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. Pet. Decl. Ex. I, Case Portal Screenshot.

III. ARGUMENT

On June 10, 2025, after Petitioner filed his lawsuit, Respondents decided to release J-C-R-M-. Respondents again determined that Petitioner was not a flight risk or a danger; therefore, they released him from custody. However, Respondents did not acknowledge J-C-R-M-'s existing parole that was and remains valid through approximately October 20, 2026. They did not conduct any individualized determination to end it, and they did not address the fact that the purpose of the parole—seeking asylum—was not yet accomplished. Instead, Respondents oddly issued a *new* "interim parole" document that purports to grant Petitioner an overlapping, concurrent, but shorter period of parole for one year, through approximately June 10, 2026.

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, 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 J-C-R-M- 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.[2]

In filing his *habeas corpus* petition, J-C-R-M- 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.

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[2] 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).

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 alter the terms of his parole without any individualized analysis. They have also conditioned his release on factors that extend beyond flight risk or dangerousness. More troubling for his right to be free from unlawful executive detention, 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 J-C-R-M-'s petition for habeas corpus.

In filing this petition, J-C-R-M- 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 J-C-R-M- 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. J-C-R-M-, like the Petitioner in *Jimenez*, had his initial release decision revoked without an individualized determination. In *Jimenez*, the court subsequently

ordered 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, moving forward, 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.

"[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.[3] Respondents released J-C-R-M- on one year "interim parole" subject to conditions. *See* Pet. Decl. ¶¶ 23–24 (explaining that J-C-R-M- was required to enroll in ISAP and is subject to reporting, including "taking my picture every Wednesday through the SmartLink App"); Declaration of Jeffrey Chan ("Chan Decl."), ECF 17 at ¶ 17 (stating that "failure to comply with release requirements set by ERO" could be a reason for re-detention). Because J-C-R-M- is in constructive custody of Respondents, his petition is not moot. As explained *supra*, this interim parole causes ongoing collateral consequences as Petitioner never lawfully revoked J-C-R-M-'s initial parole and therefore had no basis on which to issue a second parole notice.

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

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[3] 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).

be some remaining 'collateral consequence' that may be redressed by success on the petition." *Id.* J-C-R-M- was released from detention on a new set of conditions, varying in purpose and length from his previous two-year parole for the purpose of seeking protection in the United States. These new conditions are undeniably "collateral consequences" that create "concrete legal 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) ("[W]here an alien habeas petitioner is deported after he files his petition, the fact of his deportation does not render the habeas petition moot where there are collateral consequences arising from the deportation that create concrete legal disadvantages.").

First, Respondents' actions have unlawfully diminished Petitioner's rights by unlawfully reducing his period of parole and unlawfully expanding the reasons for which his parole might be revoked. In October 2024, Respondents made an individualized decision under 8 U.S.C. § 1182(d)(5) that Petitioner was not a flight risk or a danger and paroled him for the purpose of seeking asylum. When Respondents unlawfully detained J-C-R-M- on June 10, it was less than one year into J-C-R-M-'s two-year parole, But Respondents shortened his parole period without any individualized determination by issuing a *new*, shorter "interim parole" document. But they had not terminated his prior grant of parole and make no assertion that they did. J-C-R-M-'s October 2024 grant of parole is valid for two years through October 19, 2026. *See* Petitioner Decl. ¶ 7; Ex. B (I-589 Application); *Id.,* Ex. G (I-765 Approval Notice). But the "interim parole" that Respondents issued on June 10, 2025, is only "valid for one year," Chan Decl. ¶ 7, and thus expires on June 10, 2026- *prior* to J-C-R-M-'s initial parole.

Second, the interim parole is less protective in its purpose. The purpose of parole is important because parole may be terminated "upon accomplishment of the purpose for which parole was authorized." 8 C.F.R. § 212.5(e)(2); *see also* 8 U.S.C. § 1182(d)(5)(A) (parole statute

under which a noncitizen may not be "returned to the custody from which he was paroled" unless in the Secretary's opinion, "the purposes of such parole . . . have been served."). J-C-R-M- was initially granted parole to seek protection in the United States.[4]

By contrast, Respondents have offered no purpose for his new "interim parole," apart from the argument in their papers that it moots this petition. ECF 16 at 4. Indeed, Respondents have attested only that they "will not detain Petition again through the adjudication of his pending BIA appeal," regardless of whether J-C-R-M-'s appeal is successful or not. 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. Moreover, as described *infra*, the terms of Petitioner's interim parole impose new more onerous restraints on his liberty, including that Petitioner is now required to check in weekly through the SmartLink App, including by uploading his photograph, or risk re-detention. Pet. Decl. ¶¶ 24–25.

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.

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[4] In October 2024, Respondents chose to release J-C-R-M- on parole for the purpose of seeking protection in the United States. *See Y-Z-L-H-*, Case No. 3:25-cv-00965-SI, ECF 30 at 29 (finding that pursuant to his CBP One appointment, "Petitioner was paroled into the United States based on his expressed intent to apply for asylum and withholding of removal under CAT. That was the 'purpose' of his parole"). Thus, even if Petitioner's October 2024 parole technically expires in October 2026, the purpose of J-C-R-M-'s parole will persist if he continues to seek protection in the United States at that time. Even Respondents concede as much. *See* ECF 16 at 6 (citing that appealed cases last on average 382 days, to say nothing of further appellate review). J-C-R-M- will be eligible to apply for a 5-year work permit as an asylum seeker, consistent with the purpose of his initial parole, on or around October 7, 2025. *See* Pet. Decl. ¶ 9; *id.,* Ex. B, I-589 Application (submitted on or about April 10, 2025); 8 C.F.R. § 208.7 (employment authorization). Absent an individualized determination regarding changed circumstances, *see infra* Section III.C, J-C-R-M-'s parole—and freedom from detention—should continue through its intended purpose.

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

Respondents may not "automatically" moot J-C-R-M-'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, Dkt. 28 at 7.[5] 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.

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[5] 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-*, Case No. 3:25-cv-1083-SI, ECF 28 at 7 (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).

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 J-C-R-M- on June 10.[6] *See* ECF 16. To the extent that Respondents had a legal basis to detain J-C-R-M- on that date, it would have been through an individualized revocation of his parole under 8 U.S.C. § 1225(b)(2). 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.[7]

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[6] That Respondents submitted near identical papers and declarations in another pending habeas petition, without engaging with the fact that J-C-R-M- and the petitioner in that case are subject to two distinct statutory custody regimes, only underscores that they have not repudiated their conduct. *Compare N-E-M-B- v. Bostock*, Case 3:25-cv-00989-SI, ECF 16 (D.Or. July 10, 2025) *with* ECF 16.

[7] 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 J-C-R-M- 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" and that the "increased pressure on agents comes as border-crossing numbers have plummeted"), 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 undertake "the single 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.").

Section 1225(b)(1)(A)(i) could not justify Respondents' detention of Petitioner on June 10 because J-C-R-M- is not and was not in expedited removal proceedings.[8] When J-C-R-M- arrived at his CBP One appointment in October 2024, Respondents decided to issue him a Notice to Appear and 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"); *see also* U.S. Customs and Border Protection ("CBP"), *CBP One Mobile Application* (archived as of Jan. 16, 2025), available at https://web.archive.org/web/20250116051135/https://www.cbp.gov/about/mobile-apps-directory/cbpone (explaining that CBP "evaluate[s] all individuals to determine the appropriate processing disposition," and distinguishing between "Individuals processed for Expedited Removal proceedings" and "Individuals issued a Notice to Appear"). After Respondents chose to place Petitioner in § 1229a proceedings, they released him from § 1225(b)(2) custody on October 20, 2024, through their grant of parole under 8 U.S.C. § 1182(d)(5). While federal regulations establish the pathways to terminate parole, *see* 8 C.F.R. § 212.5(e), even upon a lawful termination of parole, which has not happened here, Petitioner would still return "to the custody from which he was paroled." *See* 8 U.S.C. § 1182(d)(5). Here, that authority is 8 U.S.C. § 1225(b)(2). Petitioner could never *return* to a custodial authority under which he was never subject.

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[8] In contrast to immigration court proceedings before an immigration judge, 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). For the period of time during the credible fear process, detention is mandatory. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Because J-C-R-M- 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.[9] 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 is *not* one of the four enumerated regulatory bases upon which to terminate parole and would thus not automatically, without other individualized decisionmaking from Respondents, subject J-C-R-M- to detention under 8 U.S.C. § 1225(b)(2). *See* 8 C.F.R. § 212.5(e).

Separately, J-C-R-M- 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). J-C-R-M- cannot *now* be deemed an "arriving"[10] noncitizen because he has been present in the United States for almost a year; 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,

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[9] In a similar case in which petitioner's removal proceedings were dismissed and Respondents "stated that they anticipate if Petitioner's appeal of the dismissal is denied, they likely will detain petitioner in expedited removal," this Court acknowledged "that Petitioner might not be eligible to be placed into § 1225(b)(1) expedited removal upon termination of parole but did not express an opinion on the question. *See Y-Z-L-H-,* Case No. 3:25-cv-00965-SI, ECF 30 at 27 n.101.

[10] 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).

at the point of entry, or just having made entry" to the United States). Likewise, he was paroled – by Respondents – into the United States. Indeed, Respondents *chose* to issue J-C-R-M- an NTA, instead of processing him through expedited removal. Respondents thus have no authority to detain J-C-R-M- 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 its expedited removal authority pursuant to 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). Because Respondents have neither acknowledged nor repudiated their prior unlawful conduct, this Court can and should grant Petitioner relief.

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

Respondents argue that J-C-R-M-'s case is moot because they have provided this Court assurances not to re-detain J-C-R-M- "pending 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* Section III.A, this interim parole does not return J-C-R-M- to his prior conditions of release; 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) (applying the voluntary cessation exception to mootness where, absent court intervention, "the government could redetain" the petitioner without bond at any time).

Here, the plain terms of Respondents' assurances are highly discretionary and establish an insufficient barrier to a future unlawful arrest. *See* Chan Decl. ¶ 8. J-C-R-M-'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. H. Additionally, Respondent ERO 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 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,[11] 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 sufficiently protect J-C-R-M- from future unlawful executive detention.

C. The Court should grant the writ under Count Two because Respondents' decision to re-detain J-C-R-M- 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, J-C-R-M- 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."[12] Because Respondents' June

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[11] 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).

[12] See Donald J. Trump, @realDonaldTrump, Truth Social (June 15, 2025 5:43pm), https://truthsocial.com/@realDonaldTrump/114690267066155731 ("ICE Officers are herewith

10 detention of Petitioner was arbitrary and capricious and in violation of law, this Court should grant the writ.

Respondents' arrest of J-C-R-M- was unlawful because it was an implied revocation of his parole that failed to comply with the INA, federal regulations, and Petitioner's due process rights. When Respondents detained J-C-R-M- on June 10, 2025, they provided no written parole revocation, conducted no individualized analysis of whether Petitioner's parole should be revoked, and articulated no explanation for their decision to change course so dramatically and detain Petitioner based on his individualized circumstances. As a result, Respondents' decision to detain J-C-R-M- violates the APA. 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) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made"); *see also Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance"); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (noting that DHS has incorporated Matter of Sugay "into its practice"). In *Jimenez*, "the undisputed facts in the record support[ed] that Respondents made no individualized determination" 2025 WL 2430381, at *5. So too here. "Respondents have provided no explanation at all, let alone a 'satisfactory' one" in violation of the APA. *Id.*

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ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

The INA provides that DHS "may . . . in [the Secretary's] discretion parole" an arriving asylum seeker into the United States on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Release on parole is an "express exception" to detention and is a "specific provision authorizing release." *Jennings v. Rodriguez*, 583 U.S. 231, 300 (2018). The plain language of the statute establishes that parole must be both granted and revoked on an individual, case-by-case basis: 8 U.S.C. § 1182(d)(5)(A) directs that parole may be granted "only on a case-by-case basis" and may be terminated "when the purposes of such parole shall . . . have been served."

The Supreme Court determined in *Jean v. Nelson*, 472 U.S. 846, 856-57 (1985), that the direction that the Attorney General may "in his discretion parole" requires immigration authorities to consider a putative parolee's individual circumstances in determining whether release on parole is appropriate. *See, e.g., Marczak v. Greene*, 971 F.2d 510, 515 (10th Cir. 1992) (noting *Jean* requires that immigration authorities "make individualized determinations of parole"); *accord. Diaz v. Schiltgen*, 946 F. Supp. 762, 764-65 (N.D. Cal. 1996). "[I]n each case a district director must determine whether a particular person is likely to flee, and whether that person's continued detention would be in the public interest." *Marczak*, 971 F.2d at 515. As the Tenth Circuit explained, construing *Jean*, "as a logical matter, we do not see how an immigration official could base his decision on a general rule, given the Supreme Court's requirement that the district director 'make individualized determinations of parole.'" *Id.* at 515 (emphasis omitted). Unlike the predecessor version of the parole statute, the current version expressly states that parole should be

considered on a "case-by-case basis," 8 U.S.C. § 1182(d)(5)), making it all the clearer that individualized review is required.[13]

After Petitioner arrived to seek protection in the United States, Respondents released him on parole pursuant to an individualized determination under 8 U.S.C. § 1182(d)(5) for the purpose of seeking asylum. To the extent that Respondents implicitly revoked that parole status on June 10, they did so by failing to provide him with notice of the revocation and an opportunity to respond and without a lawful individualized determination on the facts of his case. Indeed, Respondents have offered *no* justifications at all for implicitly revoking J-C-R-M-'s parole. By their own omissions, Respondents failed to assess the humanitarian benefit or public interest in J-C-R-M-'s case because they failed to consider either the purpose of his parole or the uncontroverted evidence that his detention is not in the public interest because he is neither a flight risk nor a danger to the community. 8 C.F.R. § 212.5(b)(5); ICE Parole Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture, ¶ 6.2 (Dec. 8, 2009)

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[13] In *Doe v. Noem*, 2025 WL 2630395 (1st Cir. Sept. 12, 2025), the U.S. Court of Appeals for the First Circuit denied interim, preliminary relief because the Plaintiffs had not made the necessary "strong showing." In *Doe*, a group of noncitizens were paroled under a specialized program called the CNHV program for specific humanitarian purposes. The *Doe* court held that the parole statute does not require individualized terminations but rather requires at least a reason that is non-arbitrary and capricious, which could be decided for the entire beneficiaries of the CNHV program. *Doe,* 2025 WL 2630395 at *8. Narrowly addressing this issue "mindful of the Plaintiffs' burden, in the context of a stay, to demonstrate a strong likelihood of success," the *Doe* court held that the categorical revocation published in the Federal Register was "persuasive enough" so that the Plaintiffs did not make the "strong showing" required for a preliminary injunction. The decision in *Doe* is obviously relevant but is, ultimately, not persuasive or meaningful on the issues presented here. First, unlike here, in *Doe* "no constitutional claims [were] involved in this appeal" and the ultimate statutory interpretation is still an open question before the district court. Second, even under the narrow holding in *Doe* that a categorical revocation is permissible with a non-arbitrary reason, the Respondents here provided *no* reason. Third, unlike in *Doe*, the Petitioner was not paroled under a categorical program for particular humanitarian reasons set forth in that program; rather, he was paroled individually for the purposes of seeking asylum. Finally, the Plaintiffs in *Doe* were not challenging unlawful executive detention.

(interpreting "aliens whose continued detention is not in the public interest" to mean that "he or she presents neither a flight risk nor danger to the community").[14]

DHS also did not provide notice of its intent to revoke J-C-R-M-'s parole status, which is particularly required given his steadfast compliance with this parole and its attendant conditions. As described, *supra*, DHS met none of the parole termination requirements when it detained him on June 10; on the contrary, DHS concealed its intent and covertly stationed its agents outside the immigration court. To his knowledge, Petitioner did not receive any written notice of parole revocation to justify his June 10 detention. Pet. Decl. at ¶ 21. On that basis alone, J-C-R-M-'s detention was in violation of federal regulations which require individualized determinations of parole revocation to be "upon written notice." *See* 8 C.F.R. § 212.5(e)(2)(i); *Y-Z-L-H-*, Case 3:25-cv-00965-SI, ECF 32 at 32 (granting habeas where "by denying Petitioner the required procedure before purporting to terminate his parole, Respondents acted arbitrarily and capriciously and violated the APA"); *id.* at 33 (finding Respondents' change in position without adequate basis to be "an independent and alternative basis" for finding an APA violation).

In October 2024, Respondents granted Petitioner parole; since that date, they have not "provide[d] a reasoned explanation or any changed circumstance that would justify their current departure from their prior decision." *Y-Z-L-H-*, Case 3:25-cv-00965-SI, ECF 32 at 32. Because Respondents have not even tried to offer a lawful explanation for taking Petitioner into custody on June 10, 2025, the Court should grant the writ.[15]

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[14] Available at:
https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf.

[15] Respondents argue that, as a prudential matter, this Court should require J-C-R-M- to wait to seek relief in this Court until his "BIA appeal resolves." ECF 16 at 8. But their reliance on J-C-R-M-'s appeal before the BIA is once again misplaced. Because J-C-R-M- does *not* challenge the

IV. CONCLUSION

Petitioner respectfully requests that this Court grant the writ of habeas corpus and issue the relief sought by J-C-R-M-. *See* ECF 1 at 19. Should the Court find the requested relief overbroad, J-C-R-M- requests that the Court order that: (1) the revocation of J-C-R-M-'s parole without an individualized determination was unlawful; (2) Respondents may not re-detain Petitioner unless an authorized official under 8 C.F.R. § 212.5(a) makes an individualized finding of probable cause that Petitioner is a flight risk or a danger to the community and properly terminates his parole under 8 C.F.R. § 212.5(e)(2)(i); 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.

/s/ Jordan Cunnings

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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 has found in a similar case, "[i]n [petitioner's] current remaining immigration process, Petition 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.