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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAYED NASER NOORI,

Plaintiff,

vs.

CHRISTOPHER LAROSE, warden of Otay Mesa Detention Center
SIDNEY AKI, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");
TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE");
KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS");
PAMELA BONDI, Attorney General of the United States,
U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents.

Case No.: 25-cv-1824-GPC-MSB

Agency Number: A 244-611-865

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEUS CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

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PETITIONER'S REPLY

Sayed Naser Noori seeks an order from this Court to free him from unlawful Executive detention. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that is protections have been strongest." *INS v St. Cyr,* 533 U.S. 289, 301(2001) *superseded on other grounds by statute as stated in Patel v. U.S. Att'y Gen.,* 971 F.3d 1258, 1270 (11the Cir. 2020). The writ is meant to do exactly what Mr. Noori seeks: prevent the Respondents – a whole set of immigration agencies with vast resources, who have at their disposal a punitive detention system and masked agents roving courthouses to arrest immigrants and asylum-seekers – from setting themselves above the law in order to detain him.

His petition should be granted because Respondents assert a statutorily impossible basis for Mr. Noori's detention and offer no coherent explanation for why they have detained a law-abiding individual released on parole. Their regulations and policies direct that, under the facts presented, Mr. Noori should not have been detained at all on June 12, 2025 and that every day of his detention remains unlawful. Respondents' claim of mootness is without merit. The fact that Mr. Noori is not in expedited removal any longer doesn't address the unlawfulness of his detention in the first place. Further, the fact that Mr. Noori continues to be detained is a result of that initial unlawful detention, not because of the current

status of his case. Respondents' jurisdictional arguments are without merit because the challenge here is at the core of habeas: the legality of detention. Respondents have issued no valid removal order in this case, and therefore the jurisdictional bars of 8 U.S.C. § 1252(a) and (g) are inapplicable.

The court should grant the petition and order Mr. Noori released, or, at a minimum, grant him bail under conditions established by the Court until such time as the litigation of the matter can be resolved.

I. INTRODUCTION

Until June 12, 2025, Mr. Noori believed he was moving through an immigration process governed by law, but things rapidly changed. Respondents thought the law was too fair[1], so they manipulated the system and detained Mr. Noori based on that manipulation.

On June 12, 2025, Mr. Noori arrived for his immigration court hearing knowing that he had followed every request from the immigration authorities and every rule of the immigration process at every stage. Fearing for his life in

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[1] Amanda Terkel & Lawrence Hurley, "Trump, asked if he has to 'uphold the Constitution,' says, 'I don't know'", NBC News (May 4, 2025), available at https://www.nbcnews.com/politics/trump-administration/trump-asked-uphold-constitution-says-don't-know-rcna2014580(citing the President's response about providing due process where he explained that the administration would have to provide "2 million or 3 million trials," that he "was elected to [immigrants] the hell out of here, and the courts are holding [him] from doing it"); see also, Ernst Frankel, The Dual State: A Contribution to the theory of Dictatorship 3, 24-25, 39 (Oxford U. Press 1941) (explaining hos two states arose in German in the 1900s with the "co-existence of legal order and lawlessness" where executive officials "exercise[d] their discretionary prerogatives" to create the zones of "arbitrary actions" against the politically unpopular).

Afghanistan, after receiving threats from the notorious Taliban and the murder of his brother by the Taliban, Mr. Noori sought protection in the United States, as was his right under 8 U.S.C. § 1158. As instructed by the U.S. Government, he scheduled an appointment to enter the country through the CBP One App; he attended that appointment and expressed his desire to seek asylum; and he was release on parole pursuant to 8 U.S.C. § 1182(d)(5). He eventually moved to San Diego, California and began a life, conscientiously complying with U.S. immigration law. He applied for and was granted work authorization through July 04, 2026. He timely submitted his asylum application to the San Diego Immigration Court, explaining why he merits a grant of asylum. He has not engaged in criminal activity and has no criminal record.

But the rules that applied to his case did not matter. The Executive Branch decided – without giving Mr. Noori notice, an opportunity to respond, or indeed any substantive reason for their decision - to change the rules in disregard of Due Process and the law governing parole. On June 12, 2025, Respondent ICE moved to dismiss Mr. Noori's active asylum proceedings. This motion was NOT granted and the court set a new hearing on the merits of his asylum claim for September 15, 2025. Regardless, as he exited the courtroom, in the hall just outside the courtroom door, multiple masked men handcuffed and arrested him. A video of his arrest can be viewed here: https://youtu.be/cwU_NIH-_FQ. Mr. Noori, who had

never been arrested before felt very afraid and, as he states in the video, did not understand why they were handcuffing and arresting someone that was an ally of the US armed forces in Afghanistan.

Mr. Noori has now been separated from his community and detained for nearly 3 months in an overcrowded facility where he is deprived of privacy and must sleep in the same room where he goes to the bathroom. He still does not understand why he is being treated this way when he followed all the rules and risked his life for the Unites States.

II. RESPONDENTS INCORRECTLY ARGUE THAT THE PETITION IS MOOT.

The Respondents erroneously state that the basis of the petition is that Mr. Noori is denied the ability to file for asylum while he is in expedited removal, that he is no longer in expedited removal and can once again file for asylum so the petition is moot. Document 9 page 10 of 23. Mr. Noori's contention is that on June 12, 2025, the Respondents sought to dismiss his 240 proceedings so they could put him in expedited removal, detain him, and potentially whisk him out of the country and thereby deny his right to proceed with his asylum petition and this was a denial of his rights to due process. The fact that Mr. Noori has survived this sleight of hand by the government and can once again file for asylum doesn't make what the government did any less unlawful. He remains detained and THAT is the point of

the petition. To determine if his detention was lawful and, if not, that he be released. The fact that he has survived this tactic so quickly also does not make the matter unreviewable. If an action happens and is resolved too quickly for review that is held as an exception to mootness. A claim evades review if "the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full consideration." *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1173 (9th Cir.2002) Again, the issue being litigated here is not whether Mr. Noori can file his asylum claim, the issue is whether his detention was lawful. The Respondents' attempt to deprive him of his due process rights is one reason his detention was unlawful. In fact, this tactic used by Respondents is so odious that its use has been stayed nationwide on August 29, 2025. See *Make the Road New York, et al v NOEM* 1:25-cv-00190-JMC D.D.C. (August 29, 2025)

III. THE COURT HAS HABEAS JURISDICTION TO ORDER PETITIONER'S RELEASE

The Court has subject matter jurisdiction over Count Two, which seeks Mr. Noori's release from custody. Respondents argue that section 1252 and section 1225(g) in particular, deprives this Court of jurisdiction over Petitioner's habeas petition. They are incorrect because this Court has jurisdiction under 28 U.S.C. § 2241, and no jurisdiction-stripping provision of the INA applies. This

Court also retains jurisdiction under the Suspension Clause of the U.S. Constitution.

A. **Section 1252(g) of the INA does not bar jurisdiction to grant release.**

Respondents content that 8 U.S.C. § 1252(g) prevents this court from reviewing Petitioner's claims. Doc 9 p 12 of 23. But they misconstrue this "narrow" statutory provision. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (hereinafter "AADC"). Far from barring "all claims relating in any way to deportation proceedings," *Catholic Social Services, Inc. v INS,* 232 F.3d 1139, 1150 (9th Cir. 2000), section 1252(g) simply limits review of three discrete, enumerated acts: namely, DHS's discretionary decisions "to commence proceedings, adjudicate cases, or execute removal orders." 8U.S.C. § 1252(g); *accord AADC,* 525U.S. at 482-83.[2]

Here, none of Petitioner's claims challenge these discrete, enumerated acts. Petitioner does not argue against DHS's decision to institute expedited removal proceedings. Petitioner DOES contend that Respondents did not ever properly initiate expedited removal proceedings. A careful review of the exhibits attached to Respondents' return reveals the following: The order dismissing

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[2] Although *AADC* references the "Attorney General's" discretionary determinations, that decision predates the Homeland Security Act of 2002, which transferred prosecutorial functions from the Attorney General to DHS. *See* 6 U.S.C. §§ 202, 557, 651; 8 U.S.C. § 1103(a)(1).

petitioner's 240 removal proceedings was signed and entered on June 26, 2025. See Exhibit 3 Doc 9-1 page 11 of 25. However, the Notice and Order of Expedited Removal, is dated June 12, 2025. Exhibit 5, Doc 9-1 p 18 of 25. The actual order is not signed by an immigration officer nor is it signed by a supervisor. Therefore, no new proceedings were commenced in the hallway outside the courtroom on June 12 nor was any removal order being executed. The previous removal proceedings had not been dismissed, therefore no new proceedings could have commenced and there was no removal order to be executed.

Petitioner's Count Two does not challenge such a decision. Instead, Petitioner challenges Respondent's decision to detain Mr. Noori even though he had been granted parole under 8 U.S.C. § 1182(d)(5) that neither expired nor was revoked with the requisite written notice and individualized consideration of his case and circumstances. Detention decisions are not among the three discretionary acts rendered unreviewable by section 1252(g).

None of Respondent's cases say otherwise. In *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007), the Petitioner's detention "arose from Rocha's decision to commence expedited removal proceedings." Here, Mr. Noori was not in expedited removal proceedings and could not be for another 14 days. And even if he were in expedited removal proceedings, habeas would still be an appropriate vehicle for him to seek release from unlawful custody. *See Sissoko*, 509 F.3d at

949 ("because Sissoko was never issued an expedited removal order, a habeas petition under 8 U.S.C. § 1252(e)(2) could have been successful in remedying his allegedly false arrest"). In *Saadulloev v. Garland*, No. 3:23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024), the court applied section 1252(g) because the petitioner's arrest was based solely on the government's decision to commence new removal proceedings following the petitioner's criminal charges. *See id.* (explaining that the petitioner's parole was revoked under 8 C.F.R. § 212.5(e)(1) when he "was served with a Notice to Appear, initiating removal proceedings"). *Rauda v. Jennings,* 55 F.4th 773 (9th Cir. 2021) and *Anderson v. Moniz*, No. 21-cv-11584, 2022 WL 375231, (D. Mass. Feb. 7, 2022) are both also substantially distinguishable, as the cases speak to jurisdiction over the execution of a removal order, not an unlawful detention, for which habeas is the correct route. *See Rauda*, 55 F.4th at 777 ("Matias seeks to enjoin the government from removing him or in other words, enjoin 'action by the Attorney General to ... execute removal orders against [Matias]") (emphasis added); *Anderson*, 2022 WL 375231, at *1-2 (noting that petitioner sought a stay of removal). None of these cases involved what we have here—a petitioner who challenges not a decision to commence proceedings, to adjudicate a case, or to execute a removal order, but a petitioner who challenges Respondents' decision to detain him without regard to the law governing his parole.

Moreover, even if Petitioner were currently in expedited removal proceedings, section 1252(g) does not bar this Court's review of legal questions. As the Ninth Circuit has explained, a "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority." *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *see also Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [§ 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions."). Here, Petitioner's Count Two asks the Court to interpret the legal "backdrop" against which Respondents may seek to detain him – namely, to find that Petitioner may not be detained without written notice of the individualized revocation of his parole, in contravention of federal regulations, the INA, and his Due Process rights.

B. No other provision of 8 U.S.C. § 1252 limits this Court's jurisdiction over Count Two

"[T]he REAL ID Act's jurisdiction-stripping provisions do *not* remove federal habeas jurisdiction over petitions that do not directly challenge a final order of removal." *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 958 (9th Cir. 2012)

(Thomas, J., concurring) (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006)). Petitioner challenges his unlawful detention, a challenge which "fall[s] within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (internal quotations omitted). "[C]laims that are independent of or collateral to the removal process . . . are excluded from the PFR process and, thus, may be heard in federal district courts." *Innovation L. Lab v. Nielsen,* 342 F. Supp. 3d 1067, 1076 (D. Or. 2018) (internal quotations omitted); *see also Nadarajah*, 443 F.3d at 1075-76 (affirming district court jurisdiction over habeas corpus petition that did not challenge a final order of removal).

To the extent Petitioner's challenges reach the scope of the expedited removal statute as applied to his case, his challenge centers on the fact of whether any expedited removal order was issued against him. Congress specifically provided for habeas jurisdiction in this circumstance. *See* 8 U.S.C. § 1252(e)(2)(B). Thus, no provision of the INA bars this Court's review of Petitioner's claims.

C. The Court retains jurisdiction under the Suspension Clause.

Even if a statue purported to strip this Court of jurisdiction over Petitioner's claims, the Court would nonetheless have jurisdiction under the Suspension Clause, which provides that "[t]he Privilege of the Writ of Habeas

Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion[3] the public Safety may require it." U.S. Const. Art. I § 9, cl. 2. If this Court lacks jurisdiction to hear Mr. Noori's claims, there is *no* other adequate forum that would allow Mr. Noori - an asylum seeker who has developed substantial ties to the United States—to challenge his unlawful detention. Such a "miscarriage[] of justice" would undoubtedly run afoul of the Suspension Clause, the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). Further, the Ninth Circuit has recognized that the Suspension Clause can be triggered when a petitioner is requesting relief from custody. *Rauda*, 55 F.4th at 780 (quoting *Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018)). This is exactly the case for Mr. Noori, who seeks relief from unlawful executive detention.

As an asylum seeker who has spent over a year in the United States, Mr. Noori is entitled to invoke the protections of the Suspension Clause. *See*

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[3] Respondents do not dispute that the Writ of Habeas Corpus has not been suspended. While the Executive has suggested the existence of an "invasion" and has justified sending the military to Los Angeles to "liberate" "a city of criminals;" there has been no determination from Congress that either an invasion or a rebellion exists. *See* Donald J. Trump (@realDonaldTrump), Truth Social (Jun 15, 2025 at 5:43 PM) https://truthsocial.com/@realDonaldTrump/posts/114690267066155731; Stephen Miller (@StephenM), X (Jun 9, 2025 at 2:26 PM) https://x.com/StephenM/status/1932187550598250953; Anthony L. Fisher, "Kristi Noem says the feds are coming to 'liberate' Los Angeles," MSNBC (Jun. 13, 2025, 3:00 AM) available at https://www.msnbc.com/opinion/msnbc-opinion/kristi-noem-alex-padilla-detained-los-angelesice-rcna212764.

Boumediene v. Bush, 553 U.S. 723, 739 (2008) (asking whether certain parties can invoke the Suspension Clause in light of any special status). The Clause, at "the absolute minimum . . . protects the writ as it existed" when the Constitution was adopted in 1789. *St. Cyr*, 533 U.S. at 301 (citation and internal quotation marks omitted). At that time, habeas corpus "provided a vehicle to challenge all manner of detention by government officials," and the Suspension Clause "could be invoked by aliens already in the country who were held in custody pending deportation." *D.H.S. v. Thuraissigiam*, 591 U.S. 103, 137 (2020). Mr. Noori falls squarely in this category. Unlike a noncitizen who was "apprehended within hours of surreptitiously entering the United States," *Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 445 (3d Cir. 2016), or a mere 25 yards from the border, *Thuraissigiam*, 591 U.S. at 107, Mr. Noori has developed substantial ties to the United States—he has lived here for over a year; he has been paroled; he has received work authorization; and he has complied with all requests from immigration officials and appeared at all of his immigration court hearings. He has built friendships and is a productive part of the San Diego community. Accordingly, Mr. Noori can properly invoke the Suspension Clause. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (explaining that a noncitizen's constitutional status changes after he "gains admission to our country" and begins developing community ties); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990)

("[Noncitizens] receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 178 (3d Cir. 2018) (holding that jurisdiction-stripping provision of the INA violated the Suspension Clause as applied to recipients of special immigrant juvenile status). Because Mr. Noori is entitled to invoke the Suspension Clause, this Court must exercise jurisdiction over his claims. To ensure that the Great Writ is not unlawfully suspended, a prisoner must have "a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law," *Boumediene*, 553 U. S. at 779 (quoting *St. Cyr*, 533 U.S. at 302), and the reviewing court "must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain," *id.* at 783. The need for habeas review is "most pressing" where, as here, a person is in executive detention, as such prisoners, unlike those imprisoned pursuant to a criminal sentence, have not been offered the procedural safeguards of a criminal trial prior to their detention. *Id.* at 783.

In this case, the Executive Branch has detained Mr. Noori in contravention of the laws governing his parole, including federal regulations, the INA, and the Due Process Clause. But without this Court's review, there are no adequate procedures through which Mr. Noori can show that his detention is unlawful. *See*

Boumediene, 553 U.S. at 771 (asking whether, despite the existence of a "statute stripping jurisdiction to issue the writ," "Congress has provided adequate substitute procedures for habeas corpus"). In other words, if Mr. Noori is to have any opportunity "to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law," *Boumediene*, 553 U.S. at 779 (quoting *St. Cyr*, 533 U.S. at 302), it must be because this Court exercises habeas jurisdiction.

For these reasons, the Suspension Clause provides for jurisdiction over Mr. Noori's claims.

IV. RESPONDENTS ASSERT NO LAWFUL BASIS FOR MR. NOORI'S DETENTION.

Respondents assert a statutorily impossible basis for Mr. Noori's detention and offer no coherent explanation for their decision to detain a law-abiding individual released on parole. Their regulations and policies direct that, under the facts presented, Mr. Noori should not have been detained at all on June 12 and that every day of his detention remains unlawful. Because Respondents cannot identify the applicable detention authority, Mr. Noori's detention is inherently arbitrary and unlawful.

A. Petitioner's detention is not authorized by §§ 1225(b)(1)(A)(i) or (B)(iii)(IV).

Respondents describe the cause of Mr. Noori's detention as authorized under 8 U.S.C. § 1225(b)(1). Doc 9 page 18 of 23, that he remains subject to the statutory expedited removal provisions, which mandate his continued detention.

Section 1225(b)(1)(A)(i) does not apply because Petitioner was not in expedited removal proceedings at any point on June 12, 2025. He was in 240 removal proceedings that were not terminated that day. Those proceedings did not terminate until June 26, 2025. Exhibit 5 attached to Respondents' return purports to show an order of removal under expedited removal but it was legally impossible to issue that order on June 12, 2025. No other order has ever been issued. Mr. Noori has never been in expedited removal. Therefore Respondents cannot assert 8 U.S.C. § 1225(b)(1) to detain him.

B. Petitioner's detention was not authorized by a non-codified "anticipatory" ICE detention power.

In the hallways outside the San Diego Immigration Courtrooms ICE has asserted a wholly nonexistent basis for detention: a purported authority to detain immigrants in anticipation of processing them for expedited removal proceedings. Counsel has one such other client whose case was not dismissed but was arrested by armed masked men immediately after his hearing. There is no anticipatory authority to detain someone to perhaps initiate expedited removal in the future, in case their case is actually dismissed.

Additionally, even after the original 240 proceedings were dismissed, Mr. Noori could not be subjected to expedited removal. By the statute's plain language, he does not fit into either of the two categories of noncitizens to whom this detention may apply: (1) noncitizens who are "arriving"[4] and (2) noncitizens who have "not been admitted or paroled." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Mr. Noori cannot be deemed "arriving" because he has been present in the United States for over a year. 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 paroled – by Respondents – into the United States. Indeed, when Mr. Noori appeared for his CBP One appointment, Respondents made the decision to issue him an NTA and place him in section 1229a proceedings *instead of* processing him through expedited removal. *See* 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-

[4] 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).

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").

C. Respondents' June 12 detention of Mr. Noori was unlawful.

If, by their actions on June 12, 2025, the Respondents sought to terminate or revoke his parole early, the Respondents erred procedurally and substantively by re-detaining him. If Respondents sought to revoke his parole, Petitioner was entitled to notice and an opportunity to respond. DHS's arrest of Mr. Noori on June 12, 2025, minutes after his immigration court hearing, 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.[5]

When Respondents detained Mr. Noori on June 12, 2025, they provided no written parole revocation as required by 8 CFR § 212.5(e)(2)(i),

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[5] It seems in many ways that the Respondents acted lawlessly on June 12, 2025 in their zeal to use their "power to achieve the very important goal of delivering the single largest Mass Deportation Program in History" by arresting and detaining Mr. Noori. Having done so before the the removal proceeding was ever dismissed, it appears they are now trying to belatedly justify his detention. *See* Donald J. Trump, @realDonaldTrump, Truth Social (June 15, 2025 5:43pm), https://truthsocial.com/@realDonaldTrump/114690267066155731 ("ICE Officers are herewith 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."); Donald J. Trump, @realDonaldTrump, Truth Social, May 11, 2025, 1:03pm, https://truthsocial.com/@realDonaldTrump/114490277514269016 ("Our Country has been INVADED by 21,000,000 Illegal Aliens, many of whom are Murderers and Criminals of the Highest Order, and if we aren't allowed to remove them because of a radicalized and incompetent Court System, the USA will quickly and violently become a CRIME RIDDEN THIRD WORLD NATION, NEVER TO SEE GREATNESS AGAIN."). On June 12 DHS was attempting to revoke Mr. Noori's parole unlawfully to further Mr. Trumps ambitions. Mr. Noori challenges the results of their actions: his unlawful executive detention.

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 and transfer Petitioner based on his individualized circumstances. As a result, their decision to detain Mr. Noori violates the APA. *See* Doc. 1, Count 2 (¶¶ 68-76); 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, requiring a showing of changed circumstances . . . where the previous release decision was made by a DHS officer").

1. The INA requires parole to be granted or revoked "only on a case-by-case basis".

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) (observing that under predecessor version of parole statute, "[t]he District Director is required to 'make individualized determinations of parole'"). "[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. *See also Doe v. Noem*, 2025 WL 1099602 at *18 (concluding that by the terms of the statute, such termination must attend to the reasons an individual alien received parole"); *Doe v. Noem*, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (observing that "[c]ommon sense suggests . . . that parole given only on a case-by-case basis is to be terminated only on such a basis" and pointing to individualized statutory language of § 1182(d)(5)). By contrast, courts have explained that immigration authorities do "not have the discretion to categorically terminate grants of parole," *see Doe*, 2025 WL 1099602 at *13; and may not "decide[] parole applications based on broad, non-individualized policies," *see Marczak*, 971 F.2d at 515; *accord Diaz*, 946 F. Supp. at 765.

2. Any purported revocation of parole by DHS on June 12 was unlawful.

After Petitioner arrived to seek protection in the United States, Respondents released him on parole pursuant to a case-by-case determination

under 8 U.S.C. § 1182(d)(5). To the extent that Respondents implicitly revoked that parole status on June 12, 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.

Respondents failed to assess the humanitarian benefit or public interest in Mr. Noori'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 or 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) (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").[6]

Instead, Respondents based their decision on a set of impermissible factors, including their incorrect determination that Mr. Noori was subject to detention under the expedited removal statute and their intent to categorically detain asylum-seekers like Mr. Noori to punish them and deter others from lawfully seeking asylum. *See, e.g.*, E.O. 14165, *Securing Our Borders*, 90 Fed.

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

Reg. 8467, 67-68 (Jan. 20, 2025) ("It is the policy of the United States to take all appropriate action to secure the borders of our Nation through the following means . . . (b) Deterring and preventing the entry of illegal aliens into the United States; (c) Detaining, to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States"); *id.* ("The Secretary of Homeland Security shall take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States . . . including the termination of the practice commonly known as 'catch-and-release,' whereby illegal aliens are routinely released into the United States shortly after their apprehension for violations of immigration law."); 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) ("ICE Officers are herewith 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.").

DHS failed to provide adequate notice of its intent to revoke Mr. Noori's parole status, which is particularly required given his steadfast compliance with this parole and its attendant conditions. After DHS made its decision to parole him, federal regulations specify that Mr. Noori' s parole terminates on its expiration date, when he departs the United States, or "upon the accomplishment of the purpose for which parole was authorized." 8 C.F.R. §§ 212.5(e)(1), (2)(i). If none of these three conditions is met, parole may only be terminated following written notice of an *individualized determination* that "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States." 8 C.F.R. § 212.5(e)(2)(i) (emphasis added). Respondents met none of these requirements when deciding to detain Mr. Noori on June 12. DHS did not provide any advance notice of their intent to revoke his parole on June 12; to the contrary, DHS concealed its intent and covertly stationed its agents outside the immigration court. To this date, Petitioner has received no written notice of parole revocation to justify his detention since June 12, 2025. On that basis alone, Mr. Noori's current and continued detention is 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).

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V CONCLUSION

For the aforementioned reasons, Petitioner's detention is unlawful and the court should order Respondents to release Mr. Noori.

Dated: September 4, 2025.

/s/ Brian J. McGoldrick
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