UNITED STATES DISTRICTCOURT
DISTRICT OF NEW JERSEY

DAVID BUCKINGHAM

Petitioner,

v.

John TSOUKARIS, in his official capacity as Field Office Director of Newark, New Jersey, Immigration and Customs Enforcement; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and Pamela BONDI, Attorney General, U.S. Department of Justice, et al.

Respondents.

Case No. 25-14601 (ES)

REPLY TO SUPPLEMENTAL ANSWER TO THE PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

I. "Administrative Error" Is Not Credible on This Record

The Immigration and Nationality Act empowers the Secretary of the Department of Homeland Security ("DHS") to grant parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit. 8 U.S.C. § 1182(d)(5)(A). On September 11, 2025, Mr. Buckingham affirmatively requested release from ICE custody. *See* Ex A. The Form I-830 notating Humanitarian Parole was dated September 24, 2025, two weeks after

ICE received a packet for release.

Contrary to Respondents' contention, they have not shown that U.S. Immigration and Customs Enforcement ("ICE") lacked intent to release Petitioner. On September 24, 2025, ICE issued and drafted a Form I-830, then uploaded it to the Executive Office for Immigration Review ("EOIR"), reflecting a custody-status notation of **"HUMANITARIAN PAROLE."** See ECF 24 at 1. Respondents now characterize that notation as a mere clerical mistake. The record and governing procedures say otherwise.

Respondents state that:

> Contrary to Petitioner's contention, the Respondents have not demonstrated an intention to release the Petitioner. On September 24, 2025, ICE issued a Form I-830, Notice to EOIR: Alien Address for the sole purpose of notifying the immigration court that Petitioner is detained at the Adams County Detention Center in Natchez. ECF 29, at 1.

Petitioner disagrees. Form I-830 is not a running "status report" to EOIR for routine confirmation of the status quo. Instead, Form I-830 requires notification to EOIR for triggering events that qualify as a "change in custody," such as "released on bond, transfer to a new location for detention." *See* ICE.000021.09-684, 09684drofieldpolicymanual.pdf.

Form I-830 is specifically tied to 8 C.F.R. § 1003.19, titled Custody/bond. Subsection (g), states:

> while any proceeding is pending before the Executive Office for Immigration Review, the Service shall immediately advise the Immigration Court having administrative control over the Record of Proceeding of a **change** in the respondent/applicant's custody location or of release from Service custody, or subsequent taking into Service custody, of a respondent/applicant.

8 C.F.R. 1003.19(g).

Under 8 C.F.R. § 1003.19(g), DHS must promptly notify the Immigration Court in writing of any change in a respondent's custody location or status and provide the current fixed street address. EOIR implements this requirement through Form I-830, which the Department of Justice and ICE policy expressly use for custody/location updates to EOIR. See EOIR PM § 9.1(1); EOIR Memos (I-830 electronic filing); ICE Policy 11022.1 (Detainee Transfers); and EOIR OOD PM 25-31 (clerical transfers upon I-830).

Here, ICE used Form I-830 three times to advise EOIR of the Petitioner's custody. For example, on August 18, 2025, ICE, Enforcement and Removal Operations ("ERO") Elizabeth issued Form I-830 to notify EOIR that Mr. Buckingham had been transferred from Elizabeth, New Jersey, and was now transferred to Adams County Detention Center. ECF 13-5. The form also writes in that Mr. Buckingham was detained on "August 8, 2025," but failed to check the corresponding box indicating "Detained." However, there is no question that Mr. Buckingham was in fact detained, despite the box not being checked. *Id.* After ICE/ERO-Elizabeth drafted the form, it uploaded it to the EOIR Portal on August 18, 2025. *Id.*

On August 23, 2025, ICE -Oakdale, LA drafted another Form I-830. The detention location remained Adams County Detention Center, but it noted an "Order of supervision." This Form was then uploaded to the EOIR Portal. ECF 12-5. Respondents do not address why this Form I-830, indicating a release on order of supervision was filed.

On September 24, 2025, ICE-Oakdale, LA, drafted a second Form I-830. This version reflects "HUMANITARIAN PAROLE". It wasn't uploaded onto the EOIR Portal until four days later, on September 24, 2025. However, Respondents argue that "this erroneous notation is not applicable to Petitioner," because it was an error and a box was left

unchecked.

The ICE officer correctly filled out the Petitioner's specific information on the form. However, this Form I-830 differs from the other two submitted in that it has an affirmative text recording of a specific custody status.

Further, ICE's actions are inconsistent with a "mere internal typo." A Form I-830 must be deliberately prepared, populated with the Petitioner's information, a custody-status selection made, and then affirmatively filed to EOIR, notifying the court of a change in custody. If there were no change in custody, there would be no reason and no regulatory basis under § 1003.19(g) to generate and upload a change of custody notice at all. The fact that ICE had already notified EOIR of the Petitioner's detention at the Adams County Detention Center on August 18, underscores the point that there was an intention for a change of custody.

II. Authority to Terminate Parole Was Not Followed

Once DHS grants parole pursuant to 8 U.S.C. § 1182(d)(5)(A), the Secretary has the authority to terminate parole in specific ways, including: "when the purposes of such parole shall, in [her] opinion…have been served." The governing regulation, 8 C.F.R. § 212.5(E), sets forth termination of parole: (i) automatically upon departure from the United States or at the expiration of the authorized parole period, or (ii) if not departed, at the expiration of the time for which parole was authorized.

Here, Respondents have failed to comply with the requirements imposed by the statute for terminating parole. See *Jean v. Nelson,* 472 U.S. 846 (1985). Therefore, Mr. Buckingham's continued detention is unlawful.

III. Even Assuming, *Arguendo*, That Humanitarian Parole Was Issued In Error, It Still Constitutes Agency Action.

Once ICE issued and filed the Form I-830 reflecting humanitarian parole, that decision consummated the agency's process and carried legal consequences, making it a final agency action. *See Bennett v. Spear,* 520 U.S. 154, 177-78 (1997), overruled in part on other grounds.

Under the APA, a court must "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). Agency action is arbitrary and capricious where the agency fails to consider an important aspect of the problem, offers an explanation contrary to the record, or fails to articulate a rational connection between the facts found and the choice made. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 41–43 (1983). Courts judge agency action by the reasons the agency gave, not post-hoc litigation rationales. *SEC v. Chenery Corp.*, 318 U.S. 80, 94–95 (1943). And when an agency changes position, it must acknowledge the change and provide good reasons, including addressing reliance interests where relevant. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1 (2020).

Here, Petitioner submitted a humanitarian-parole request on September 12, 2025. On September 24, 2025, DHS/ICE issued and uploaded a Form I-830 in Petitioner's EOIR record reflecting a custody-status change—the very function of the I-830 under 8 C.F.R. § 1003.19(g), which requires DHS to "immediately advise" the immigration court of a respondent's release or subsequent taking into custody while proceedings are pending. That filing consummated DHS's custody decision and carried legal consequences, satisfying the

APA's "final agency action" test. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997), overruled in part on other grounds.

Respondents now characterize the I-830's humanitarian-parole notation as an "administrative error," but 8 C.F.R. § 212.5(e) sets the exclusive means by which parole may end: automatically upon departure or at the expiration of the authorized period, or upon written notice that continued parole is unwarranted (with service of a charging document constituting such notice). None of those events occurred here.

Labeling the filed I-830 a "mistake" is still agency action—indeed, a rescission of an earlier decision—that must both comply with § 212.5(e)'s termination procedure and satisfy reasoned decision-making under the APA. See *State Farm*, 463 U.S. at 41–42; *Fox*, 556 U.S. at 515–16; *Chenery*, 318 U.S. at 94–95. The government's bare assertion does not explain why a change-of-custody form was prepared, populated, and uploaded to EOIR, nor why no written-notice termination was issued as § 212.5(e) requires. On this record, DHS's purported rescission is procedurally unlawful and substantively arbitrary, and detention predicated on that unlawful termination must be set aside. 5 U.S.C. § 706(2)(A), (D).

IV. PETITIONER'S EMERGENCY MOTION IS WARRANTED

To obtain a temporary restraining order, a petitioner-plaintiff "must establish that his likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008).

Respondents argue that granting Petitioner's emergent motion would delay the hearing, which runs contrary to the public interest in the efficient enforcement of immigration laws. However, proceeding for efficiency's sake does not serve the public

interest when it tramples due process. Courts in this Circuit have long recognized that protecting the "constitutional rights of persons within the United States" is itself a paramount public interest. *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013) (quoting *ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003)).

Allowing the Petitioner to continue his detention thousands of miles from his family and counsel might ensure efficiency, but it comes at the cost of a fair trial. Petitioner's immigration attorney cannot meet with him in person. Petitioner cannot reliably review applications or evidence with his lawyer. The only way for the Petitioner to review the applications for relief, which Petitioner must attest to under oath, is through an unreliable mail system that can take weeks—if the documents arrive at all. Urgent, confidential attorney-client calls often require at least two days' advance scheduling, contingent on facility availability. These conditions undercut the fairness of the merits hearing and the integrity of the process on which the public depends. See *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554–56 (9th Cir. 1990) (affirming injunction safeguarding access to counsel and legal materials for immigration detainees as a due-process imperative); cf. *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320–21 (3d Cir. 2020) (endorsing tailored injunctive relief in immigration detention to prevent procedural harms while litigation proceeds). And recent courts confirm that when DHS short-circuits required procedures, courts order release because it is in the public interest for agencies to follow the law. *Y-Z-L-H- v. Bostock*, No. 3:25-cv-965-SI (D. Or. July 9, 2025) (granting habeas; finding parole termination unlawful under the APA). On this record, a narrowly tailored TRO, preventing further transfer, preserving counsel access, and restoring the status reflected on the I-830, advances the public interest in lawful, orderly adjudication and avoids "efficiency" that

comes at the expense of due process.

CONCLUSION

Petitioner respectfully requests that this Court: (1) order Respondents to effectuate Petitioner's release within 24 hours under the most recent custody decision (humanitarian parole). (2) Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

/s/Veronica Cardenas

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