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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Pedro Yimi Cardin Alvarez Petitioner, v. David Rivas, Warden of the San Luis Detention Center; Gregory J. Archambeault, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations; Todd Lyons, Acting Director of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; and Pamela Bondi, United States Attorney General, Respondents.	Case No. CV-25-02943-PHX-GMS (CDB) **PETITIONER'S REPLY**

INTRODUCTION

Counsel is responding within the ten (10) days of service of Respondents' Response, Doc. 14, in accordance with the Order from this Court, Doc 6. However, Respondents have not served Petitioner with Documents 17 and 19, which could have a significant and material effect on Petitioner's ability to properly reply to the claims made in Assistant Field Office Director, Fernando Valenzuela's Declaration and in Respondents' Reply, Doc 14; Doc 14-1. Accordingly, Petitioner is submitting a Motion for Separate Service of Sealed Documents at the same time as this Reply, with a request to amend this Reply after service of the sealed documents.

LEGAL FRAMEWORK AND FACTUAL BACKGROUND

When a noncitizen is deemed inadmissible under 8 U.S.C. § 1182(a)(7), the immigration officer must order the noncitizen's removal, unless the noncitizen indicates an intention to apply for asylum or fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(A)(i). The noncitizen may be placed in "expedited removal" proceedings, which contain a condensed asylum process and require that the noncitizen remain detained throughout the process. *See* 8 U.S.C. § 1225(b)(1). The noncitizen also may be placed in 8 U.S.C. § 1229a removal proceedings, which have more robust due process protections. Section 1182, however, has a subsection, which allows noncitizens, even those in mandatory detention, to be "paroled" into the United States. 8 U.S.C. § 1182(d)(5)(A).

In the present case, Mr. Cardin was released pursuant to 8 U.S.C. § 1182(d)(5)(A) and placed into regular § 1229a removal proceedings under back in 2022 following his entry into the U.S. Yet, despite applying for relief, including asylum, and complying with

all requirements placed upon him by the Department of Homeland Security ("DHS"), DHS moved to dismiss Mr. Cardin's removal proceedings at his scheduled hearing on May 27, 2025. After exiting the courtroom, Petitioner was arrested by ICE agents. While Respondents claim that Mr. Cardin was issued a Notice of Order of Expedited Removal, Form I-860, charging him with inadmissibility under Section 212(a)(7(a)(i) of the Immigration and Nationality Act ("INA") on May 2, 2025, this is not accurate. While Counsel would prefer to confirm this after reviewing the sealed documents, Counsel is confident that the statement is inaccurate, as the Assistant Chief Counsel for DHS stated during the July 2, 2025, Custody Redetermination Hearing that Mr. Cardin was not yet in Expedited Removal Proceedings.

ARGUMENT

Respondents argue that this Court lacks jurisdiction based on certain limitations on judicial review under the INA. However, that assertion is misplaced. This Court retains jurisdiction over the present habeas petition pursuant to 28 U.S.C. § 2241 and the protections guaranteed by the Suspension Clause of the U.S. Constitution.

Under 28 U.S.C. § 2241, federal district courts have the authority and jurisdiction to hear applications for habeas corpus by *any* person who claims to be held "in custody in violation of the Constitution or laws or treaties of the United States." The "essence of habeas corpus is an attack by a person in custody upon the legality of that custody," and thus to be within the "core of habeas corpus," a petitioner must seek "either immediate release from that confinement or the shortening of its duration." *Preiser v. Rodriguez*, 411 U.S. 475, 484, 489 (1973).

While Respondents frame Mr. Cardin's Petition for Writ of Habeas Corpus as a challenge to the commencement of removal proceedings, the Petition for Writ of Habeas Corpus is more accurately described as a challenge of his unlawful detention following the termination of his parole and § 1229a removal proceedings, given that he was being detained without a Notice to Appear, without an Order of Expedited Removal, and without any pending proceeding to justify his continued custody.

The Suspension Clause of the U.S. Constitution allows for this Court to exercise jurisdiction over Mr. Cardin's claims. The Supreme Court in *Boumediene v. Bush* provided three factors for district courts to consider when evaluating the reach and applicability of the Suspension Clause. 553 U.S. 723, 766 (2008). Those factors are: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Id.* For the first factor, courts compare the process that a detainee has actually been afforded with the "procedures and adversarial mechanisms that would eliminate the need for habeas corpus review." *Id* at 767. As for the second factor, that the apprehension and detention took place within the United States weighs in favor of finding rights under the Suspension Clause. *Id* at 768. Concerning the third factor, if government objectives will be compromised if habeas corpus courts had jurisdiction to hear the detainees' claims, that may weigh against application of the Suspension Clause, but that is not the case here. *See id* at 769-771.

In *Department of Homeland Security v. Thuraissigiam*, the Supreme Court provided an analysis of the Suspension Clause in the immigration context. 591 U.S. 103, 114 (2020). Thuraissigiam, a noncitizen, was apprehended within 25 yards of the border and detained for expedited removal. *Id.* He claimed a fear of returning to his home country, Sri Lanka but also affirmed that he did not fear persecution based on a protected ground. *Id.* Accordingly, the asylum officer determined that Thuraissigiam lacked a credible fear of persecution and ordered him removed, which was affirmed by a supervising officer and an Immigration Judge. *Id.* Thuraissigiam then filed a habeas petition, arguing that he was deprived of a "meaningful opportunity to establish his claims" and requesting a writ of habeas corpus directing the government to provide him with "a new opportunity to apply for asylum and other applicable forms of relief." *Id* at 114-115. The Supreme Court found that the Suspension Clause was inapplicable in that case because Thuraissigiam was not seeking release from custody. *Id.* at 117–118. Instead, he sought to have his removal order vacated and to obtain another opportunity to apply for asylum, which the Court characterized as a request for "the opportunity to remain lawfully in the United States," which it "falls outside the scope of the writ [of habeas] as it was understood when the Constitution was adopted." *Id.* at 119.

Petitioner's case is readily distinguishable from *Thuraissigiam*. Petitioner does not seek "the opportunity to remain lawfully in the United States," but merely seeks release from custody, which is the traditional purpose of the habeas writ. Petitioner also was lawfully paroled into the U.S. as opposed to being apprehended just inside the border and

placed on Expedited Removal Proceedings, has lived here for over three years, has connections to the United States, and has been granted a work permit.

Under the *Boumediene* factors, and the distinction between a migrant who is "at the threshold of initial entry" from one who is more established in this country, the Suspension Clause applies to Petitioner. For the first factor, although Petitioner is not a citizen, he has a much stronger status than the petitioners in *Boumediene* and *Thuraissigiam*. Petitioner was not apprehended only 25 yards from the border and immediately ordered removed but instead he was paroled into the United States and has remained here for over three years. He was apprehended at the Miami Immigration Court and, upon information and belief, has not yet been ordered removed. During his over three years in the U.S., Petitioner has received work authorizations and has developed significant ties to the community, including a U.S. Citizen girlfriend, a Lawful Permanent Resident father, and several friends who are either U.S. Citizens or Lawful Permanent Residents.

With respect to the second *Boumediene* factor, if the 8 U.S.C. § 1252 were to deprive the Court of jurisdiction to review Mr. Cardin's detention, then he would have *no* forum to challenge his detention, especially if he is not in *any* rem oval proceedings. Even if Respondents have placed Petitioner in Expedited Removal proceedings, they have effectively stripped Mr. Cardin of both procedural safeguards and a forum to adjudicate his claims. The absence of any meaningful review mechanism, combined with the limited avenues for judicial oversight under the expedited removal framework, leaves

Mr. Cardin with no access to a court with jurisdiction to review the legality of his detention outside of the Petition for Writ of Habeas Corpus.

Concerning the third factor, Respondents' Response does not express any arguments as to any practical obstacles that prevent Mr. Cardin from seeking the writ of habeas corpus. There is no evidence that Petitioner is dangerous or a flight risk. Notably, Respondents made the decision to parole Petitioner when he arrived, without having ties to the community or approved work authorizations, and in the over three years since his entry into the country, Petitioner's ties to the United States have only increased. Petitioner also has complied with the law during his presence in the United States, as evidenced by his lack of criminal record and the fact that he was detained at the Miami Immigration Court, where he was trying to formalize his status.

Thus, this Court has jurisdiction pursuant to the Suspension Clause

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, this Court should find that it has jurisdiction over this case and should grant the petition.

Respectfully submitted,

/s/ Kenia Garcia
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Dated: September 26, 2025

CERTIFICATE OF SERVICE

On September 26, 2025, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court for the District of Arizona, using the electronic case filing system of the Court. I hereby certify that I have served all parties electronically or by another manner authorized by the Federal Rule of Civil procedure 5(b)(2)

Dated this 26th day of September 2025.

/s/Kenia Garcia
Kenia Garcia