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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Pedro Yimi Cardin Alvarez	) Case No. CV-25-02943-PHX-GMS (CDB)
	)
Petitioner,	)
	) <b>PETITIONER'S SUR-REPLY</b>
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.	)
	)

## INTRODUCTION

Petitioner filed his initial Reply on September 26, 2025, where the arguments for jurisdiction are explained. Doc. 20. Petitioner incorporates the arguments in Petitioner's Reply, Doc. 20, by reference. Accordingly, this Sur-Reply will address the other claims made by Respondents in their Response, Doc.14, now that Petitioner has been afforded the opportunity to review the documents provided.

## 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). An indication of an intention to apply for asylum would require a deportation officer to refer the person to a credible fear interview with an asylum officer. *See* 8 U.S.C. §1225(b)(1)(A)(ii). There are no published regulations or procedures on how to request a credible fear interview outside of "indicat[ing] an intention to apply for asylum, express a fear of persecution or torture, or express a fear of return to your country". *See* Exh. A – Credible Fear Screening webpage from USCIS; Exh. B – 8 C.F.R. § 208.30.

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 *and served*” 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 27, 2025, this is not accurate. *See* Doc 14., p. 3 (emphasis added). Documents 19-1 and 19-2 contain several versions of Form I-860. These include forms that were signed by the same immigration officer but show different signatures, some that include a supervisor’s signature and others that do not, and some that have a signed certificate of service while others are missing it. Similar deficiencies are seen in the Warrant for Arrest of Alien, Form I-200, and Warning for Failure to Depart, Form I-229(a), both of which contain no signatures by anyone. Additionally, 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**

Petitioner maintains that his Petition for Writ of Habeas Corpus is 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 and without an Order of Expedited Removal.

Respondents did not attempt to serve Mr. Cardin with the Notice and Order of Expedited Removal until after this action was filed. Although all versions of Form I-860 are dated May 27, 2025, there are serious questions regarding their authenticity. These versions should be identical copies of the same document, possibly at different stages in the process. However, that is not the case. Instead, for a document allegedly issued on the same date, at the same time, there are three different signatures for Deportation Officer CN2860 NG and for Jean-Carlo Costales. In the versions signed by a supervisor, there are also two different signatures for Assistant Field Office Director Z. 7358 Rivera. *See* Exh. C – Forms I-860, with signature discrepancies highlighted.

Even if one version of the Form I-860 is considered valid, Respondents claim that service was made on August 18, 2025, 83 days after Mr. Cardin's detention. Respondents claim that Mr. Cardin refused to sign the Form I-860, however, Mr. Cardin maintains that he was never served. But even if we take Respondents' claim as true, they waited 83 days after detaining Mr. Cardin before serving him with the Notice and Order of Expedited Removal. There is no justification for this delay given that Mr. Cardin was in Respondent's custody the entirety of those 83 days, making him easily accessible for service. Therefore, regardless of the documents' validity, Respondents held Mr. Cardin in custody for nearly three months without placing him in *any* proceedings or issuing a removal order.

Similar concerns with validity of documents and subsequently the allegations of the Respondents are seen in other crucial documents, such as the Warning for Failure to Depart, where no version of this document signed by anyone and does not indicate that Mr. Cardin refused to sign as seen on one of the Form I-860, yet it was allegedly served on July 15, 2025. *See* Exh. D – Warning for Failure to Depart. The same issue is seen with the Warrant for Arrest of Alien. *See* Exh. E – Warrant for Arrest of Alien.

Even if the Notice and Order of Expedited Removal was served on August 18, 2025, that does not rectify the 83 days in detention without being in *any* proceedings or having *any* removal order. *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 359 (S.D.N.Y. 2019) (finding that “[petitioner’s] current detention is unconstitutional because it was unconstitutional at the time that he was taken into custody, and it cannot be rectified by the Government’s last-minute production of a reinstatement order.”).

Additionally, the Respondents alleged repeatedly that Mr. Cardin had not made a request for Credible Fear Proceedings until date. However, there are no published regulations or procedures on how to request a credible fear interview outside of “indicat[ing] an intention to apply for asylum, express a fear of persecution or torture, or express a fear of return to your country”. *See* Exh.A – Credible Fear Screening webpage from USCIS; Exh. B – 8 C.F.R. § 208.30. Mr. Cardin indicated his intention to apply for asylum with his previous application for asylum.

Respondents knew of Mr. Cardin’s previous I-589 because his detention was a coordinated with the Office of the Principal Legal Advisor (“OPLA”). OPLA had knowledge as early as May 22, 2025, that it intended to move for dismissal of Mr.

Cardin's removal proceedings. This is evidenced by an internal note found on page 69 of Document 19-2, which states: "Alien has an upcoming master hearing with Judge Araneta on May 27 2025 at the Miami Immigration Court. The Alien's case may be dismissed because the alien is amendable to ER. OPLA is referring this case to ERO for apprehension detention and processing for ER."

Mr. Cardin reiterated his contradictory political opinion for the question listed on the Jurat for Record of Sworn Statement in proceedings under Section 235(b)(1) of the Act, where the officer noted that Mr. Cardin "[d]id not agree with government situation in Cuba." *See* Exh. F – Jurat for Record of Sworn Statement in proceedings under Section 235(b)(1) of the Act. It is possible that Mr. Cardin explained in more details, as this document is only the officer's notes of the conversation, and these "sworn statements" are generally unreliable, as 72% of the time the asylum seeker signs the sworn statement without the opportunity to review it. *See* Exh. G – U.S. Commission on International Religious Freedom, *Expedited Removal Study Report Card: 2 Years Later*. This jurat is also not dated. *See* Exh. F - Jurat for Record of Sworn Statement in proceedings under Section 235(b)(1) of the Act.

Mr. Cardin then attempted to resubmit his I-589 with U.S. Citizenship and Immigration Services ("USCIS") on September 12, 2025, before Respondents' Response was submitted, as he was not in any removal proceedings at the time. *See* Exh. H – Proof of Attempt to Resubmit I-589. The Rejection of this I-589 due to lack of jurisdiction was issued September 30, 2025. *Id.* Thus, Mr. Cardin made his intention to apply for asylum

clear, as evidenced by his initial I-589, his attempt at resubmission of his I-589, and his responses to detention officers.

Respondents created the situation to make Petitioner subject to mandatory detention by dismissing his §240 removal proceedings. Respondents then ignored and bypassed proper procedure and detained Mr. C without *any* Notice to Appear, Order of Removal, or Warrant for Arrest of Alien. Then, even if the Court were to accept the documents submitted by Respondents as authentic, which remains in serious doubt, they still failed to serve Petitioner the Notice and Order of Expedited Removal until 83 days after his detention began.

While Respondents mention that Petitioner is only afforded limited due process rights, even individuals subject to substantial government restriction still retain a constitutionally protected interest in their liberty. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2084921, at \*3 (N.D. Cal. July 24, 2025).

### **CONCLUSION**

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause and the Reply, this Court should grant the petition.

Respectfully submitted,

/s/ Kenia Garcia

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Dated: October 6, 2025

**CERTIFICATE OF SERVICE**

On October 6, 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 6th day of October 2025.

/s/Kenia Garcia  
Kenia Garcia